

V. 2953 No. 14933

**United States
Court of Appeals**
for the Ninth Circuit.

G. A. PEHRSON,

Appellant,

vs.

C. B. LAUCH CONSTRUCTION CO., a Cor-
poration,

Appellee.

Transcript of Record

**Appeal from the United States District Court
for the District of Idaho,
Northern Division.**

FILED

JAN 25 1936

No. 14933

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Spokane, Washington,

Attorneys for Appellant.

JOHN D. MacGILLIVARY,
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Spokane, Washington.

HAWKINS & MILLER,
Coeur d'Alene, Idaho,
Attorneys for Appellee.

In the District Court of the United States for the
District of Idaho, Northern Division

Civil Action No. 1986

G. A. PEHRSON,

Plaintiff,

vs.

C. B. LAUCH CONSTRUCTION CO., a Corpora-
tion,

Defendant.

COMPLAINT

Plaintiff complains of defendant and for cause
of action alleges:

I.

Plaintiff is a citizen of the State of Washington.

Defendant is a corporation incorporated under
the laws of the State of Idaho.

The matter in controversy exceeds, exclusive of
interest and costs, the sum of three thousand dol-
lars.

II.

Plaintiff is now and for many years last past has
followed the profession of an architect, residing
and having his office at Spokane in the State of
Washington, and is now and at all times herein
mentioned has been duly licensed under the laws
of the State of Idaho to practice his profession as
an architect in the State of Idaho.

III.

On or about the 31st day of March, 1952, Class A School District No. 82, in Bonner County Idaho, a corporation of the State of Idaho with its headquarters at Sandpoint in said County and State, entered into a contract with defendant for the construction by it of a six-room one-story brick elementary school building, with wood frame, flat roof, for the Cocolalla area of said school district situated at Cocolalla in Bonner County, Idaho. Prior thereto plaintiff was employed by said school district as an architect to prepare plans and specifications for said school building and to supervise its construction for the purpose of seeing that it conformed with the plans and specifications prepared by plaintiff, and it was plaintiff's duty during the course of the construction of said school building, on request of said school district, to immediately inspect the construction work so as not to delay or retard its progress. For the purpose of constructing said building, said school district delivered to defendant possession of the site on which the building was to be constructed, such possession to continue until the work was finished and the building turned over to said school district.

IV.

During the course of the construction of said building and on or about the 12th day of September, 1952, at which time the said building was about 50% completed and the roof work and the roofing being installed thereon was about 90% completed, plaintiff while on a trip to inspect said school

building was notified by a trustee of said school district that the roofing as being applied was being improperly laid on the roof planking by defendant and plaintiff was directed to forthwith proceed to inspect the same and to check other portions of said building. Thereupon plaintiff checked some work on the first floor of said building accompanied by said school trustee who then directed plaintiff to inspect the roof.

V.

In order to get to the roof of said school building it was necessary to climb up a ladder to the left of the entrance of said school building and up to a concrete ledge forming a roof over the entrance to said building, and after getting from the ladder onto said concrete roof ledge, it was necessary to climb over a concrete parapet wall of said building about 8 inches thick to the main roof thereof.

Said concrete roof ledge over said entrance is about 13½ feet from the ground and projects from the main building wall about 3 feet; the top of the concrete parapet wall of said building is about 4½ feet above the top of said concrete roof ledge over said entrance and the main roof of said building is about 16 inches below the top of said parapet wall, which has a champered front edge sloping down toward the roof about 2 inches for drainage.

The standards of said ladder reached about a foot above said ledge and the top rung of said ladder was about level with the top of said ledge over said entrance.

VI.

The only means of access to the roof of said building furnished by said defendant was by means of said ladder. In order to reach said concrete roof ledge it was necessary to move the whole body from said ladder to said concrete roof ledge and to accomplish this it was necessary to stand with the left foot on the second rung from the top of the ladder and to move the right knee over onto the concrete roof ledge of said entrance. In order to maintain a balance of the body while moving from the ladder to the concrete roof ledge it was necessary to reach up and take a strong hold of the concrete parapet wall of the building with the left hand, then after the right knee was securely resting on the concrete roof ledge and with the balance of the weight of the body on the right knee, the left hand was moved over from the ladder to the concrete roof ledge and the hold on the concrete parapet wall above was released. After transferring the entire weight of the body from the ladder to the roof ledge, it was necessary to take hold of the top of the concrete parapet wall of the main building above the concrete roof ledge with both hands and hoist one's self over the parapet wall and onto the roof of the main building. In order to reach the ground from the roof, it was necessary to follow the reverse of said movements.

VII.

At said time in question, to wit, on September 12, 1952, said trustee of said school district preceded plaintiff up said ladder going through said move-

ments aforesaid and safely reached the roof. As soon as said trustee was off the ladder and on the roof, plaintiff proceeded to climb up said ladder and upon reaching the top of the ladder, plaintiff stood thereon with both feet and holding onto the right hand standard of the ladder with his right hand, he reached up and took hold of the concrete parapet wall with his left hand, and while moving his right knee over and partly onto the roof ledge, said ladder began to and did move slowly to the left farther away from the concrete ledge, causing the fingers on plaintiff's left hand slowly to lose their grip and slip off the top of said concrete parapet wall, precipitating plaintiff onto a pile of broken concrete blocks and rubbish near the base of said ladder, and plaintiff was thereby rendered unconscious and his body was so bruised and injured that he became and was for a long time sick and sore and confined to his bed and to the hospital for a long period of time during all of which time said plaintiff suffered tormenting and excruciating pains and endured great mental and physical pain and anguish and that the injuries which plaintiff suffered as a result of the negligence and carelessness of defendant as hereinafter alleged are permanent and have and will permanently disable plaintiff in large part from attending to his business.

VIII.

It was the duty of defendant in the construction of said building to take all necessary precautions for the safety of employees and other persons right-

fully on the premises; to erect and properly maintain at all times as required by the conditions and progress of the work all necessary safeguards for the protection of workmen and the public; to allow plaintiff as the architect of said building to at all times have access to the work wherever it was in preparation or progress and to provide proper facilities for such access and for inspection and to at all times keep the premises free from accumulations of waste material or rubbish during the progress of the work, and that it was the duty of defendant to exercise reasonable and ordinary care to see that the premises were free from danger and to refrain from subjecting plaintiff in the exercise of his duties to unnecessary peril.

IX.

Said ladder was of light construction and inadequate for the purpose for which it was being used and was not fastened to said ledge, and that the position of said ladder against said concrete ledge and the complicated manner in which a person climbing said ladder had to adopt in order to successfully crawl onto said ledge and over said parapet wall and onto the roof of the main building constituted and created a dangerous situation and a grave and serious menace and peril to the life and limb of employees and persons rightfully on the premises and required to reach the roof of said building and particularly to this plaintiff.

X.

Defendant was negligent and careless in the use of said ladder in such position and place against said building as the only means of reaching the roof of said building and returning therefrom and in not keeping the ground in and about the base of said ladder free from broken concrete blocks and rubbish and other waste material. Defendant was negligent and careless in not taking the necessary precautions for the safety of those who rightfully had to use said ladder to reach the roof of said building and in failing to erect and properly maintain at all times as required by the conditions and progress of such work all necessary safeguards for the protection of the workmen and the public and this plaintiff and in failing to provide proper facilities for access and for inspection by plaintiff of said building and the roof thereon and all portions thereof and in failing to keep the premises free from accumulations of waste material and rubbish, particularly in and about the base of said ladder during the progress of the work, and in failing to exercise reasonable and ordinary care towards this plaintiff to see that the premises were free from danger and in failing to refrain from subjecting plaintiff to unnecessary peril.

XI.

Plaintiff alleges that he is an architect of long years of experience, 68 years of age at the time of his injuries, with a life expectancy of about eleven years, and at said time was earning and for a long

time prior thereto had been earning approximately \$20,000.00 per year and was capable of earning even larger sums.

Prior to said accident he was in good health, and a strong, robust man. He is fitted by education and experience for no other calling or profession. As an architect he is required to inspect and examine buildings of all kinds in course of construction and in order to secure business as such architect he must be physically fit and able to perform his duties as an architect. On account of his great and permanent injuries plaintiff is crippled and lame and will be prevented from earning his living in his profession in the future.

XII.

Plaintiff further alleges that as a result of his fall as hereinbefore alleged, he sustained a comminuted fracture of the right femur, to wit, a shattering of the bone in the region of the right hip and below the region of the hip, a fracture of the left clavicle or collar bone and two broken ribs and other painful bruises and contusions; that he was taken in an ambulance to a hospital at Sandpoint, Idaho, in an unconscious condition where X-rays showed a fracture of the right hip bone in three places and then removed by ambulance to a hospital in Spokane, Washington, where he was under the care of physicians and surgeons; that several operations were performed on plaintiff; that from the date of said accident he was confined to the hospital and to his home until about February 12, 1953;

that he was treated by means of wires inserted through the femur and tibia on September 13, 1952; on September 19, 1952, the operation for the comminuted fracture of the right femur was performed consisting of a 12-inch-long incision and inserting a metal plate 6 inches long, $\frac{1}{4}$ inch thick, and $\frac{5}{8}$ inches wide, and a metal bolt $\frac{5}{16}$ x 3 inches was screwed into his hip joint with 4 screws about 2 inches long, while the fractured clavicle was reduced by means of an open reduction and held in position with a figure eight stainless steel wire bolted to the bone; that when he returned to his home he had to use a walker for about two months, then crutches, and finally canes. That plaintiff's entire nervous system has been severely shocked and permanently impaired as a result of said injuries. During all of said time plaintiff suffered tormenting and excruciating pains and endured great mental and physical anguish and plaintiff now suffers and will continue to suffer for the remainder of his life great and continuous pain in the right hip and in the left shoulder which is aggravated by motion and that he is still under the care of physicians and surgeons and will be for a long time to come. Said wounds so negligently and carelessly inflicted upon plaintiff by defendant are permanent and the injuries which plaintiff suffered as a result thereof are permanent and have and will permanently prevent plaintiff from following the normal practice of his profession, and he will continue to suffer during all of his life great mental and physical pain and anguish.

By reason of the matters and things hereinbefore alleged, plaintiff has been damaged in the sum of \$100,000 on account of his pain, suffering, and injuries as aforesaid; that he has suffered and will continue to suffer a loss of earnings from the practice of his profession in the sum of \$220,000 and that he has also incurred in hospital bills, physicians' and surgeons' services, nursing, medicines and bandages, ambulance service, and X-rays and other similar services the sum of at least \$3,500.

Wherefore plaintiff prays judgment against said defendant for the sum of \$323,500 and for his costs and disbursements herein sustained.

/s/ FRANK FUNKHOUSER,

/s/ THERRETT TOWLES,

/s/ JAMES G. TOWLES,

Attorneys for Plaintiff.

[Endorsed]: Filed August 16, 1954.

[Title of District Court and Cause.]

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon James G. Towles, whose address is 107 Sidney Building, Kellogg, Idaho, or Therrett Towles, whose address is 1231 Old National Bank Building, Spokane, Washington, or Frank Funkhouser, whose ad-

dress is 1329 Old National Bank Building, Spokane, Washington, plaintiff's attorneys, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated August 16th, 1954.

[Seal] /s/ ED. M. BRYAN,
 Clerk of Court.

By /s/ LONA MANSER,
 Deputy.

Return on Service of Writ attached.

[Endorsed]: Filed August 18, 1954.

[Title of District Court, and Cause.]

ANSWER

Comes now the defendant and for answer to the complaint of plaintiff admits, denies and alleges:

I.

Defendant admits the allegations of paragraphs I, II and III of plaintiff's complaint.

II.

For answer to the allegations contained in paragraph IV, defendant admits that on September 12, 1952, the school building mentioned in said para-

graph IV was nearing completion and that on said date plaintiff visited the premises on a periodic inspection trip. Defendant does not have sufficient information upon which to form a belief as to the other allegations of paragraph IV and, therefore, denies the same.

III.

For answer to paragraph V, defendant admits that there is a concrete roof ledge over the entrance to the building about 13½ feet from the ground, projecting from the main building wall about 30 inches; that the top of the concrete parapet wall of the building is above the top of the concrete roof ledge, and the main roof of the building is about 16 inches below the top of the parapet wall with a champered front edge sloping down toward the roof about 2 inches for drainage. Defendant denies the other allegations contained in paragraph V.

IV.

Defendant denies the allegations contained in paragraph VI of plaintiff's complaint.

V.

For answer to paragraph VII defendant admits that on September 12, 1952, while attempting to climb a ladder from the ground to the roof of the school building being constructed by the defendant, the plaintiff sustained a fall to the ground. Defendant does not have sufficient information upon which to form a belief as to the nature of plaintiff's action immediately preceding his fall, as to the cause of

such fall, or as to the nature and extent of alleged injuries suffered by plaintiff as a result thereof, and for that reason, denies all other allegations of said paragraph VII.

VI.

For answer to the allegations contained in paragraphs VIII, IX and X of plaintiff's complaint, defendant denies that it was guilty of any negligence or breach of duty owed by the defendant to plaintiff as alleged in said paragraphs and denies that any alleged negligence or breach of duty on its part was a proximate cause of plaintiff's fall or of the injuries allegedly sustained by plaintiff as a result thereof.

VII.

For answer to the allegations contained in paragraphs XI and XII of plaintiff's complaint, defendant admits that as a result of his fall on September 12, 1952, the plaintiff sustained certain injuries and losses and incurred certain medical and hospital expenses. Defendant does not have sufficient information upon which to form a belief as to the nature and extent of such injuries, losses and expenses, and for that reason, denies the allegations of paragraphs XI and XII and particularly denies that plaintiff has been damaged in the sum of \$323,500, or in any other sum, as the result of any negligence or breach of duty on the part of defendant.

For Further Answer and by Way of a First Affirmative Defense, defendant alleges that if the

complicated manner allegedly adopted by plaintiff in attempting to reach the roof of the school building in question created a dangerous situation and a grave and serious menace and peril to the life and safety of plaintiff as alleged in his complaint, plaintiff, himself, in adopting such method of attempting to reach the building roof failed to exercise reasonable care for his own safety and was himself guilty of negligence materially contributing to cause the injuries complained of.

For Further Answer and by Way of a Second Affirmative Defense, defendant alleges that if there were anything dangerous attendant upon the method adopted by plaintiff in attempting to reach the roof of the school building in question, such dangers were open and obvious to anyone exercising reasonable care for his own safety, and in adopting such method of reaching the roof, the plaintiff assumed all risk of injury attendant upon the use of such method.

Wherefore, having fully answered, defendant prays that the complaint of plaintiff be dismissed and that defendant be awarded its costs and disbursements.

HAWKINS & MILLER,

/s/ JOHN D. MacGILLIVRAY,

Attorneys for Defendant.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 16, 1954.

[Title of District Court and Cause.]

NOTICE

To: Frank Funkhouser—1329 Old National Bank
Bldg., Spokane, Wash.

Therrett Towles—1231 Old National Bank
Bldg., Spokane, Wash.

James Towles—107 Sydney Bldg., Kellogg,
Idaho.

Hawkins & Miller—Coeur d'Alene, Idaho.

John D. MacGillivray—711 Old National Bank
Bldg., Spokane, Wash.

Take Notice that the above-entitled case has been
reset for jury trial in said Court at 10 o'clock a.m.,
on Wed., Oct. 20, 1954, at Coeur d'Alene, Idaho.

Date: Oct. 12, 1954.

ED. M. BRYAN.

In the District Court of the United States for the
District of Idaho, Northern Division
No. 1986

G. A. PEHRSON,

Plaintiff,

vs.

C. B. LAUCH CONSTRUCTION CO., a Corpora-
tion,

Defendant.

JUDGMENT

This cause came on for trial before the Court and
jury, both parties appearing by counsel, and the
issues having been duly tried and the jury having
rendered a verdict for the defendant.

Wherefore, By virtue of the law, and by reason of the premises aforesaid, it is ordered and adjudged that the plaintiff take nothing upon his complaint herein, and that the defendant have and recover from the plaintiff its costs and disbursements incurred herein, taxed in the sum of \$188.32.

Witness the Honorable Chase A. Clark, Judge of said court, and the seal thereof, this 22nd day of October, 1954.

[Seal] ED. M. BRYAN,
Clerk.

By /s/ LONA MANSER,
Deputy.

[Endorsed]: Filed October 22, 1954.

[Title of District Court and Cause.]

BILL OF COSTS

Memorandum of Costs and Disbursements

Witness Fees

Spokane—32 miles

Richard Van Slate—

3 days @ \$4.00 per day	\$ 12.00	
Mileage, 64 miles @ 7c	4.48	\$ 16.48

Alvin Slentz—

3 days @ \$4.00 per day	\$ 12.00	
Mileage, 64 miles @ 7c	4.48	16.48

Harold F. Loveland—

1 day @ \$4.00 per day	\$ 4.00	
Mileage, 64 miles @ 7c	4.48	8.48

Charles E. Brunett—

1 day @ \$4.00 per day	\$ 4.00	
Mileage, 64 miles @ 7c	4.48	8.48

Careywood, Idaho—30 miles

Joe A. Chloupek—

3 days @ \$4.00 per day	\$ 12.00	
Mileage, 60 miles @ 7c	4.20	16.20

Edgar Judy....

3 days @ \$4.00 per day	12.00	
Mileage, 60 miles @ 7c	4.20	16.20

Sandpoint, Idaho—45 miles

Arnold Pichl—

3 days @ \$4.00 per day	\$ 12.00	
Mileage, 90 miles @ 7c	6.30	18.30

Corment Burgman—

3 days @ \$4.00 per day	\$ 12.00	
Mileage, 90 miles @ 7c	6.30	18.30

Boise, Idaho—410 miles

Royal Richardson—

3 days @ \$4.00 per day	\$ 12.00	
Mileage, 820 miles @ 7c	57.40	69.40

Total costs		\$ 188.32
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Costs taxed this 3rd day of November, 1954, in the amount of \$188.32.

/s/ ED. M. BRYAN,
Clerk.

Dated this 25th day of October, 1954.

JOHN D. MacGILLIVRAY;
HAWKINS & MILLER;

By /s/ WM. S. HAWKINS.

Attorneys for Defendant.

Duly verified.

[Endorsed]: Filed October 25, 1954.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

To: John D. MacGillivray and Hawkins & Miller,
Attorneys for Defendant:

Please take notice that the plaintiff, G. A. Pehrson, intends to and does hereby move the Honorable Court in the above-entitled cause to vacate and set aside the verdict of the jury rendered in favor of the defendant and against plaintiff in the above cause, and to grant a new trial of said cause upon the following grounds, to wit:

1. Insufficiency of the evidence to justify the verdict, and that the verdict is against the law.

2. Errors in law occurring at the trial and excepted to by the plaintiff.

Said motion is made upon the records, files and proceedings in said cause.

Dated this 1st day of November, 1954.

/s/ FRANK FUNKHOUSER,

/s/ THERRETT TOWLES,

/s/ JAMES G. TOWLES,

Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 1, 1954.

[Title of District Court and Cause.]

ORDER

This matter is before the court at this time on Plaintiff's Motion for New Trial. The Court has heard oral argument and has fully considered the briefs of respective counsel and the record herein, including affidavits presented on behalf of the plaintiff.

Counsel for both parties have cited the case of *Hooten vs. City of Burley*, 70 Idaho 369, 219 Pac. 2d 651. It is the opinion of this Court that the presumption which arises in a wrongful death action of a prima facie inference that the person killed was, at the time, in exercise of ordinary care and was himself free from contributory negligence, does not arise in a case such as this where the plaintiff is the person injured and his own testimony clearly establishes his contributory negligence.

It is not necessary to consider any particular ruling of the Court during the trial of this matter, because controlling here is the question of contributory negligence. G. A. Pehrson, plaintiff herein, is an architect in Sopkane, Washington, and has been in that business for about fifty years. During this time his firm has worked on about 1,600 projects, including 65 schools and ten hotels. The injury complained of herein arose while he was architect for a school building being constructed at Cocalalla, Idaho, for School District Class A, Bonner County, Idaho, and while he was on an inspection tour of

the building in company with a member of the school board. The testimony of the plaintiff is to the effect that Mr. Hirst, the school board member, preceded him, the plaintiff, up the ladder for an inspection of the roof while the plaintiff stood at the bottom with one hand on the ladder. Mr. Pehrson said he felt the ladder move or slip to one side, but immediately thereafter he began to climb up the ladder without taking any precautions to determine whether or not it was setting solidly on the ground or against the building at the top. The plaintiff further testified that he knew there was a risk involved in going up a ladder under such conditions, but that he took that chance, fell and was injured.

It appears to this Court that the plaintiff, by his own testimony, conclusively shows he was guilty of contributory negligence as a matter of law.

For this reason, the Motion for a New Trial is hereby Denied.

Dated this 30th day of August, 1955.

/s/ CHASE A. CLARK,
Chief Judge, United States District Court, District
of Idaho.

[Endorsed]: Filed August 30, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that G. A. Pehrson, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the judgment entered in the above-entitled action on October 22, 1954, and from the Order Denying Plaintiff's Motion for a New Trial, on August 30, 1955.

Dated at Spokane, Washington, this 28th day of September, 1955.

/s/ JAMES G. TOWLES,
/s/ FRANK FUNKHOUSER,
Attorneys for Plaintiff.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 28, 1955.

United States Court of Appeals
for the Ninth Circuit
No. 1986

G. A. PEHRSON,

Appellant,

vs.

C. B. LAUCH CONSTRUCTION CO., a Corpora-
tion,

Appellee.

APPELLANT'S STATEMENTS OF POINTS

Comes now the Appellant, and hereby states that he intends to rely upon the following points of appeal:

1. The trial court erred in denying a motion for a new trial.

2. The trial court erred in not allowing plaintiff's witness Donald Hirst to testify.

3. The trial court erred in striking from the complaint allegations of negligence, alleging that the premises were not kept free of waste material and rubbish. (143)

4. The trial court erred in refusing to admit in evidence that portion of Exhibit 11, subheading Disposal of Waste Material, (page 12) and Portable Ladders (pages 41 and 42) of said exhibit.

5. The trial court erred in not giving plaintiff's requested instructions Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11. (231)

6. The trial court erred in entering judgment for the defendant.

7. The trial court erred in the admission of certain testimony and the refusal to admit certain exhibits, especially Exhibit 11.

Dated at Spokane, Washington, this 28th day of September, 1955.

/s/ JAMES G. TOWLES,

/s/ FRANK FUNKHOUSER,

Attorneys for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 28, 1955.

In the United States District Court for the District
of Idaho, Northern Division

No. 1986

G. A. PEHRSON,

Plaintiff,

vs.

C. B. LAUCH CONSTRUCTION CO., a Corpora-
tion,

Defendant.

TRANSCRIPT

Honorable Chase A. Clark, sitting with a jury.

Appearances :

FRANK FUNKHOUSER, ESQ.,

THERRETT TOWLES, ESQ.,

JAMES G. TOWLES, ESQ.,

Attorneys for the Plaintiff.

JOHN D. MacGILLIVRAY, ESQ.,

HAWKINS AND MILLER,

Attorneys for the Defendant.

October 20, 1954, 10:00 A.M.

(Selection of Jury.)

The Court: You may call your first witness.

Mr. Towles: I would like to inquire are any of
the executive officers of the defendant company in
the courtroom?

Mr. MacGillivray: No, they are not.

Mr. Towles: The president is not here?

Mr. MacGillivray: He is not.

Mr. Towles: Nor the vice-president nor the secretary-treasurer?

Mr. MacGillivray: No, they are not.

Mr. Towles: And where do they reside?

Mr. MacGillivray: They reside in Boise, Idaho. Mr. Lauch may be here tomorrow, I do not know.

The Court: I think I will take a short recess before we have the opening statement.

(Admonition to the Jury.) [1*]

The Court: Gentlemen, before we recess may I have a stipulation that it will not be necessary to give this admonition before each recess or adjournment of the Court?

Mr. Towles: The Plaintiff will so stipulate.

Mr. MacGillivray: Again, that may be stipulated.

October 20, 1954, 11:05 A.M.

(Opening statement by Mr. Towles.)

G. A. PEHRSON

called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Towles:

Q. Mr. Pehrson, are you the plaintiff in this case? A. I am.

(Testimony of G. A. Pehrson.)

Q. Where do you live? A. Spokane.

Q. And what is your address?

A. 719 East Twenty-fourth.

Q. How long have you lived in Spokane?

A. Since 1906.

Q. What is your business, Mr. Pehrson?

A. I am an architect. [2]

Q. How long have you been in that business?

A. About fifty years.

Q. In that business do you maintain an office in Spokane? A. Yes, sir.

Q. And where is that?

A. In the Old National Bank Building.

Q. What was your age at the time of the accident? A. Sixty-eight.

Q. What is your build, will you describe it for the record, please?

A. My height is five foot eight and one-half inches. I weight one hundred sixty-five pounds.

Q. Are you stocky?

A. I am not stocky. I am about standard as you probably can see.

Q. Are you married? A. Yes.

Q. Do you have children? A. Yes.

Q. Are you fitted to anything other than the profession of an architect?

A. No, that is my profession.

Q. Can you tell us, just as briefly as you can, about some of the buildings that you have been architect for?

(Testimony of G. A. Pehrson.)

A. I came out to this country for the Davenport Hotel and I was in charge of that construction. I have designed [2-A] the Paulsen Medical and Dental Building in Spokane and the Chronicle Newspaper Building in Spokane. I have designed the Florence Hotel in Missoula and the Leland Parker Hotel in Minot, North Dakota, and I have done several buildings in California, five houses and three store buildings. We were architects on the Hanford Project and designed that. I was on that from 1943 to 1945. We have designed about sixty-five schools, among the later ones is the Sandpoint High School and these schools in Bonner County. At the present time we are building a hospital in Bonners Ferry. We have designed things like the Centennial Flouring Mills in Spokane, you probably know about that building, and we have designed about one hundred sixty houses, running from twenty-five thousand dollars to one hundred fifty thousand dollars. Our projects in the fifty years that I have been practicing are about sixteen hundred, so you can see I cannot repeat all of them. We have been fortunate enough to have a good business.

Q. How many schools have you designed, Mr. Pehrson? A. Sixty-five.

Q. And how many hotels? A. Ten.

Q. Are you acquainted with School District Class A, No. 82, Bonner County, Idaho? [3]

A. Yes, sir, that is at Sandpoint.

Q. And do you know its officers?

A. Yes, sir.

(Testimony of G. A. Pehrson.)

Q. And did they engage your services as an architect for the construction of several school buildings in November of 1951? A. Yes, sir.

Q. And now this particular school building at Cocolalla, Idaho, did you prepare the plans and the specifications for that building? A. Yes, sir.

Q. What kind of a building is it, just tell the jury.

A. It is a one-story building with a multi-purpose room. It is a six schoolroom building with a multi-purpose room constructed of concrete foundation, walls, and brick walls, wood joists, plank roof with composition roofing.

Q. I am handing you Plaintiff's Exhibit Number One and Plaintiff's Exhibit Number Two marked for identification, and I will ask you to state what they are.

A. Exhibit Number One is the specifications—the specifications for the general work and for the plumbing, the heating and the electric wiring for the school building for Cocolalla, Idaho.

Q. Does that contract contain a condition of the contract as a part of the contract? [4]

A. The contract is not in here.

Q. This is the contract (indicating)?

A. This is part of the contract—this is the contract here, the first four pages is the formal contract and the rest of it is the specifications. Exhibit Number Two is the drawings of the general construction, it is all the drawings required to construct the building by.

(Testimony of G. A. Pehrson.)

Mr. Towles: I wish to offer the contract in evidence and to substitute a copy in its place. The contract is admitted in the pleadings.

Mr. MacGillivray: We object to the admission of Exhibit Number One being the contract and the contracting conditions as between Bonner County School District Number 82 and the Lauch Construction Company on the basis and grounds that it is immaterial; it is a contract between the two parties and Mr. Pehrson is not a party to the contract. That contract is wholly immaterial here. This raises a question of law that there will probably be quite a bit of discussion on.

The Court: I will reserve my decision on the admission of that Exhibit. The Court has not ruled on the admission yet. If the Court does permit you to put that in evidence then, [5] of course, you will be permitted to substitute a copy but there is no necessity of doing that at this time.

Mr. Towles: May I read the pertinent provisions of this?

The Court: Not at this time, not until I rule on it.

Q. What was your duty in connection with the construction of this building?

A. My duty as an architect consisted of preparing the plans and the specifications, assisting the owners in taking bids and letting the contract. After the contract is awarded the architect's duty is to check the construction to see that the contract was complied with and that the owner got what was

(Testimony of G. A. Pehrson.)

contracted and that the contractor was not asked to do anything beyond what the contract called for. I was an arbitrator besides being the agent of the owner. My duty was to supervise the construction and continuously check to see that the contract was complied with on both sides.

Q. Now then, can you tell us on September 12, 1952, what was the condition of the school building?

A. Up to that time the building was about fifty per cent completed. The roof planking was on, the walls were up and the construction company was working on the interior partitions and such things.

Q. What happened on September 12, 1952, with regard to [6] your inspection of the construction of this building?

A. I periodically was on the job and on September 12th I started out. We had four or five jobs going on at that time for Bonner County and the first one was at Cocolalla. I stopped at Cocolalla to check that job and before going any further I called at the Cocolalla store, the store was operated by one of the school trustees and I reported that I was on the job to check—Mr. Hurst was the school trustee and Mr. Hurst said “I will go with you to the building, there is something I want to talk to you about.” and so together we started on to the school, this was about 11:30 on September 12th and we got to the school and looked over a few things inside as to the framing and how it was nailed and spiked and fitted and Mr. Hurst said——

(Testimony of G. A. Pehrson.)

Mr. MacGillivray: We object to that as hearsay, that is, any conversation with Mr. Hurst.

The Court: The objection is sustained as to any conversation with him, you may just proceed.

Q. Just what you did, not any conversation that you had with anybody.

A. Mr. Hurst and I—your Honor, if I can answer that I [7] don't know, Mr. Hurst instructed me to do certain things.

The Court: Anything that he told you in the absence of the defendant or any officers of the defendant company or any of its agents would not be admissible, just what you did.

A. Well, what we did, after we got through on the first floor Mr. Hurst started up the ladder to the roof. When he got up there off the ladder—it was a ladder standing on the west side of the school building next to a concrete ledge over the main entrance, and the ladder was sixteen feet long and reached to that ledge. Mr. Hurst climbed up and got off the ladder on the ledge. After he got on the ledge he went over the parapet wall on the roof, it was about three feet and eight inches above the ledge and he went over the parapet and I started up, I got to the top of the ladder and began to transfer my body from the ladder to the ledge and to perform that action—am I to explain that?

The Court: Just what you did, yes.

A. In order to get to the roof, so far as I was concerned, the only method I could use was to climb to the top of the ladder, when I got to the second

(Testimony of G. A. Pehrson.)

rung from the top [8] I took hold with my left hand on the parapet wall, which was three feet and eight inches above the ledge, to steady myself because it is hard to balance on a ladder when you get to the top and that is the method that I used. After I got hold of the parapet wall with my left hand I moved my right knee over on the concrete ledge and began to get the balance of my body over on the right knee and to get my balance off the ladder, and in so doing, which I have done several times before, but at that time, as I was doing that, the ladder began to move to the left and I didn't have sufficient weight of my body on the ledge and so in striving to get my body over on the ledge, that is to get the weight of my body over on the ledge, I began to kick harder on the ladder with my left foot and the ladder was so short that I was at the top of the ladder and I began to feel that the ladder moved to the left and kept on moving slowly and there was nothing that I could do except striving all that I could to get my balance over and I began to feel that my grip up on the parapet wall with my fingertips began to slip and as it slipped and as the ladder moved further I felt my fingertips slipping off and I knew there was nothing to do but to fall to the ground. I fell, and I remember nothing beyond that after I hit the ground. I knew that I was falling through the air, I knew that [9] I was going to fall, and after I hit the ground I lost my consciousness and from that time on I knew nothing further.

Q. Mr. Pehrson, did you make some drawings

(Testimony of G. A. Pehrson.)

here so that you could have a model made of the condition there? A. Yes, I did.

Q. I am now handing you Plaintiff's Exhibits Numbers Three and Four, and I will ask you to state what those drawings are and the purpose of them.

A. I made them for the purpose of preparing a model so that the jury could see what the building looked like. It is hard for people that are not used to drawings to interpret a drawing, and so I made this up and had the modeler make a wood model of the front of the building and the concrete ledge.

Q. Did you have this model made from the drawing which you had made?

A. From the drawings I had made and also from Exhibit Number Two, yes, it is also from these drawings.

Q. From drawings that are Exhibits Three and Four? A. Yes, Three and Four.

Q. And you had this model made?

A. Yes, sir.

Q. Did you supervise the making of this model?

A. Yes, sir.

Q. Does it correctly depict the conditions as they were [10] at the time of the accident in question?

A. Yes, sir.

Q. And on what scale is that made?

A. One-half inch to the foot so that this portion (indicating) of the building was twenty times as big as that model is.

Q. Mr. Pehrson, will you put on this model where

(Testimony of G. A. Pehrson.)

that ladder was located, just indicate, or put this model in place.

A. This represents the ledge, this is the level of the land at the time of the accident, this ladder, the ladder that was used stood up like that (indicating). This is the position of the ladder approximately, but the ladder was never in the same position very long, it was light and sometimes it was over here, sometimes maybe over here, it was never exactly in the same position. At the time of the accident this is approximately where it was standing. As I began to climb off on this ledge I had my left foot on this rung of the ladder and as I began to climb off—here is the parapet wall, and I hung onto that with my left hand as I began to get my knee over on this ledge, the ladder began to slide this way.

Q. Now you have been describing this from Plaintiff's Exhibit Number Five?

A. Yes. [11]

Mr. Towles: I wish to offer in evidence at this time Plaintiff's Exhibits Numbers Three and Four marked for identification, the drawings and this model marked as Plaintiff's Exhibit Number Five.

Mr. MacGillivray: In order to save time, Mr. Hawkins and I have not seen these exhibits and after the recess this evening I wonder if we could check Exhibits Three and Four as to just what they are and what they contain?

The Court: Yes, you may do that.

Mr. MacGillivray: And as to Number Five I wonder if I may ask a question or two on voir dire.

(Testimony of G. A. Pehrson.)

The Court: Yes, you may do that.

Q. (By Mr. MacGillivray): Mr. Pehrson, can you tell us—on the building itself as constructed according to your plans and specifications, the height of the bottom of the overhanging ledge from the top of the concrete foundation.

A. It is to the top of it twelve feet from the top of the concrete foundation, but it is fifteen feet and four inches from the grade at the time of the accident.

Q. And there is brickwork from the foundation to the [12] bottom of the ledge? A. Yes.

Q. And what is the height of that brickwork?

A. Eleven feet and seven inches.

Q. Eleven feet seven inches? A. Yes.

Q. The ledge itself is what width?

A. Six inches.

Q. And the concrete wall above the ledge is what height?

A. From the top of the ledge it would be three feet and two inches.

Q. From the top of the brickwork to the top of the parapet wall would be three foot eight?

A. Three feet and eight inches, yes.

Q. And the ledge is of concrete construction?

A. Yes.

Q. And it extends out from the parapet wall for a distance of what? A. Two foot ten.

Q. And the ledge is of what length?

A. It is approximately twelve feet eight inches from this high wall here (indicating).

(Testimony of G. A. Pehrson.)

Q. In other words, from the left side of the ledge looking toward the building, over to the right side against this wall (indicating)? [13]

A. That is approximately twelve feet six inches, I would say.

Q. Now, the ladder that you have made a scale of, you say is a sixteen foot ladder?

A. Yes, sir, that is one-half inch to the foot.

Q. Had you ever measured the ladder that you used?

A. No, but I knew that it reached to that point on the ledge, that is the only thing I could say, I had not measured the ladder.

Q. Then the ladder is possibly not an exact replica of the ladder in question?

A. No, not outside of as I have said.

Q. In other words, the ladder would reach down below or up above the ledge in accordance with the pitch of the ladder?

A. Yes.

Q. Do you know how many rungs there were on the ladder?

A. The standard is fourteen inches from edge to edge, that is what the builders use, but they do vary.

Q. And was this a standard ladder that builders use?

A. Yes, it was made with two-by-four uprights and one-by-three rungs.

Q. And it was the standard that you see all builders use?

A. No, not exactly, as I recall the rungs were on

(Testimony of G. A. Pehrson.)

the outside of the uprights and usually the builders use a filler in between the rungs for the standards they have [14] between the rungs on the two-by-fours they have one-by-twos to make the standards out flush with the rungs.

Q. You have seen standard ladders constructed like this one? A. Yes.

Q. And used on many construction projects?

A. Yes, sir.

Q. Now, Mr. Pehrson, turning this exhibit around here, you show in the back the top of the parapet wall here (indicating) is this to demonstrate the roof itself, right here (indicating)?

A. That is approximately. I might explain that the roof slopes and it might not always be that, it might not always be in that position. It happened that at the point of entrance it was a little over fourteen inches from the top of the parapet wall to the roof.

Q. On the Exhibit you have the roof down three feet and two inches from the parapet wall?

A. I didn't give the modeler any instructions. It varies and never is the same.

Q. So that the jury may understand, when you reached your leg over the parapet wall, which was three feet and two inches, you then put your foot upon the roof just fourteen inches below the top of the wall? A. That's right. [15]

Q. And the top of the roof continues the same way around the building?

(Testimony of G. A. Pehrson.)

A. No, not the same, it varies, but the minimum was fourteen inches.

Q. It was fourteen inches at this point?

A. Yes.

Q. Now, Mr. Pehrson, the ground that you have out here, that is not intended to duplicate the actual ground condition as it existed that day?

A. No.

Q. The ground that you have with the fall off here, and the ground not extending to the foundation, that is not intended to duplicate the conditions as they were on September 12th?

A. Yes, I will have to explain that.

Q. All of the depressions on the ground shown on this exhibit, you know that those were present on that date?

A. Yes, that ground level was approximately three feet below the first floor level at that time or when the job was started as that Exhibits Number Two and Number Three will show, and that grade of the basement was 94. Figuring from the first floor and establishing the first floor as 100 the natural ground elevation was 94.41 or approximately five feet and four inches below the first floor. During the process of excavation [16] it shows a part of it, as it shows on Exhibit Two, a part of the side was cut and a part of it had to be filled. During the process of the excavation for crawl tunnels and so forth, the dirt was piled in front of the building. At the time of the accident as far as my record shows, and we keep a fairly complete record, that

(Testimony of G. A. Pehrson.)

was the elevation. The elevation of the ground at that time was 97 or three feet below the first floor.

Q. What I have reference to, Mr. Pehrson, was out about fifteen or twenty feet you have various depressions in the ground here at this point, now that is not supposed to be an exact replica of this depression or that depression?

A. No, that is right, that is just approximate.

Q. Did you make this model, Mr. Pehrson, or did you prepare these drawings?

A. I prepared the drawings, I didn't have time to make the model, I had a man by the name of Donald Pond make it.

Q. Were the models or drawings taken from the original drawings of the job itself?

A. Of the building, yes, sir.

Q. And what about the ground?

A. The ground at that time, I think I stated, Mr. MacGillivray, that my notes shows that at that time the [17] ground level was 97. That is what we tried to establish that elevation at, in that area, maybe a few inches one way or another.

Q. In the course of construction of a building such as this, the excavation, and the backfill being done, causes the ground level to change from time to time? A. That is correct.

Mr. MacGillivray: We have no objection to the exhibit.

The Court: Then it may be admitted. And does that apply to number three and number four?

Mr. MacGillivray: We would like, if we may,

(Testimony of G. A. Pehrson.)

your Honor, to look at numbers three and four later on, if you will withhold ruling.

The Court: Yes, ruling will be reserved and you may look at them. This is number five, the model, and it may be admitted at this time.

Q. (By Mr. Towles): I believe, Mr. Pehrson, you stated that you kept notes and records of the grade elevation around that school building?

A. Yes.

Q. Handing you Exhibit marked Plaintiff's Exhibit Number Six for identification, will you state what those notes represent on that paper? [18]

A. They represent the field survey.

Q. The field survey?

A. Yes, sir, of the ground before the work was started. In order to design the footings and the amount of concrete and other material required and the depth of the footings, it is necessary to get a survey to establish the contours of the ground, so that we can determine how deep the footings are to go and those are the field notes or the notes that were taken when the survey of the contours were taken.

Mr. Towles: I offer Exhibit Number Six in evidence at this time, from that the drawings, Exhibits Exhibits Number Two and Three were prepared.

Mr. MacGillivray: May I ask a question?

The Court: Yes, you may.

Q. (By Mr. MacGillivray): Mr. Pehrson, these are the field notes of whom?

A. Myself and another man.

(Testimony of G. A. Pehrson.)

Q. They were prepared when?

A. That was shortly after our contract was signed, probably that was in March of 1952—if I may see that other exhibit—yes, it was somewhere about the middle of March, 1952. [19]

Q. March of 1952? A. Yes.

Q. This is all just hieroglyphics to me but that portrays the ground level as of the middle of March, is that right? A. That is right.

Q. And it does not portray the ground level as it continued, as the construction continued to September of 1952?

A. You can see some figures there—I would have to interpret that, there are some figures on that Exhibit, if you will look at it, I think I can explain it. These elevations, the grade elevations, on these drawings, were established from that field drawing in order to determine the footings, as I said before, we had to get the condition of the ground before any work was done on it, and that is represented on that.

Q. But still it doesn't represent any ground level after construction was started?

A. No—yes, some of them do, some of the figures the black figures represent the way it was before any work was done. The figure 94.42 represents before any work was done and the other figure 98 is supposed to represent what we intended it to be when the job was finished. In other words, the black figures are the way it was before we started and the

(Testimony of G. A. Pehrson.)

red ones are the [20] way we intended it to be after it was completed.

Mr. MacGillivray: I think it is immaterial, your Honor, Mr. Pehrson has testified now that the ground level changed and did change.

The Court: I will say this, it is all Greek to me.

Mr. MacGillivray: Yes, and I think it is worse than Greek to the jury.

The Court: I understand that Exhibits Number Three and Four have everything on them that is on this exhibit. Is that right, Mr. Pehrson?

A. You say three and four?

The Court: I understand they have everything on that the exhibit we are talking about now has.

A. I believe that all of the things that are before you now have reference to each other.

The Court: But I understood you to say that Exhibits Three and Four were drawings that you had made from that Exhibit.

A. Exhibits Number Three and Four are drawings made from the figures.

The Court: I thought that was the way you had explained it.

A. That is right. [21]

The Court: Yes, now we understand it. I thought that all of it was embraced in Exhibits Three and Four.

A. That is right.

The Court: Then it is not necessary to admit this exhibit. If Three and Four are admitted you have all of this in the record.

(Testimony of G. A. Pehrson.)

Mr. Towles: May I ask a question at this point?

The Court: Yes, you may.

Q. (By Mr. Towles): What distance did you fall from the top of that ledge to the ground?

A. Fifteen feet and four inches.

The Court: There are two matters before the court now, one is the admission or rather the question of admission of Exhibits Three and Four. No objection was made to these exhibits as yet, but I understand that counsel wants to look at them before ruling is made, and the other is concerning this one that he now has in his hand and the Court will reserve ruling on that until you have had time to look at the other exhibits. Then, there is also the objection to the admission of the contract. I don't believe inasmuch as this plaintiff not being a party to the contract, Exhibit Number One, I don't think it is admissible, and the objection to Exhibit Number One will [22] be sustained.

Mr. Towles: Your Honor, the contract was admitted in the pleadings and this plaintiff is the agent of the school district and has so testified.

The Court: If it is admitted then it doesn't need to be introduced in evidence. I don't know how it can help the situation any. This plaintiff is not a party to the contract, he is not obligated in any way under this contract.

Mr. Towles: He is obligated to make prompt inspection of the work.

The Court: But that is a matter between him and the school board.

(Testimony of G. A. Pehrson.)

Mr. Towles: But, your Honor, it is a part of the contract.

The Court: Well, if they have admitted it in the pleadings, you certainly have nothing to worry about, but so far as the ruling of the Court is concerned, the Court does not think it is material.

Mr. MacGillivray: We admitted the execution of the contract on March 31st, I believe it was, and we admitted that we had entered into the premises and were in charge of the premises at the time the accident happened. [23]

The Court: I think that is all that would be necessary, the terms and conditions of the contract would not be material in here, they have admitted that he was inspecting that school building which the school board were having built. You may look at these exhibits during the recess of the Court.

Mr. MacGillivray: Thank you, your Honor.

DR. J. P. MONSON

called as a witness by the Plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. James G. Towles:

Q. Doctor, will you state where you are practicing at the present time?

A. At Sandpoint, Idaho.

Q. And who are you associated with?

A. The North Idaho Clinic.

(Testimony of J. P. Monson.)

Q. Approximately how long have you practiced in Sandpoint?

Mr. MacGillivray: We will admit the qualifications of the doctor, I think perhaps that will save some time.

The Court: Yes, it will save considerable time. You may proceed, the qualifications are admitted.

Q. Do you recall the events of September 12, 1952, which [24] happened in regard to Mr. Pehrson? A. Yes.

Q. And will you state what you recall happened on that day?

A. I was called shortly after noon to treat an emergency in the hospital, I was working in the clinic at that time and when I arrived at the hospital Mr. Pehrson was there on a stretcher in the emergency room.

Q. What was his condition at that time?

A. He was semi-conscious, he was not clear but he would respond when spoken to.

Q. Was he in a state of shock at that time?

A. In mild shock, yes, sir.

Q. At the time he was there, did you take any X-ray pictures of his body? A. Yes, we did.

Q. Are those the pictures that you have in your hand? A. Yes.

Q. Handing you Exhibit Number Seven, will you state what it is?

A. Exhibit Number Seven is an X-ray of the pelvis and the hip bone and the upper femur is ac-

(Testimony of J. P. Monson.)

tually there, also. It is actually a flat plate of the pelvis and hips.

Q. Is that of Mr. Pehrson?

A. Yes, it is. [25]

Q. And what does the X-ray show?

A. The X-ray shows a comminuted fracture of the neck of the right femur.

Q. Will you explain in a few words, in layman's language, what that is?

A. It means that the neck or the upper end of the big bone, the femur, has been broken into more than two pieces, that is, the upper leg where it joins the pelvis, and it has been broken, as I say, into more than two pieces in the area—the neck is the area where the bone turns to lodge in the pelvis where it rotates in the pelvis.

Q. Handing you Plaintiff's Exhibit Number Eight, will you state what that is?

A. That is an X-ray of the left shoulder, showing a fracture of the medial aspect or the center of the clavicle, the left clavicle which is the collar bone and runs from the sternum to the shoulder.

Q. Were those pictures taken on September 12, 1952? A. Yes.

Mr. Towles: We offer in evidence Exhibits Number Seven and Eight.

Mr. MacGillivray: We have no objection.

The Court: They may be admitted. [26]

Q. Did you have any conversation with Mr. Pehrson the day that he was in the hospital?

A. Yes.

(Testimony of J. P. Monson.)

Q. Will you state to the best of your recollection what that was?

Mr. MacGillivray: We object to any conversation as hearsay, Dr. Monson didn't treat Mr. Pehrson.

A. I did treat him until we found evidence of the fractures at which time I called Dr. Wendle to come and care for him.

The Court: That is all you wanted to know, wasn't it, Mr. Towles. You will not need any more conversation.

Mr. Towles: No, that is all right.

Q. Did you send Mr. Pehrson to Spokane to any other doctor?

A. I did not, Dr. Wendle did, he took over the case after I had seen the patient.

Mr. Towles: That is all.

Mr. MacGillivray: I have no questions.

The Court: Court will be adjourned at this time until ten o'clock tomorrow morning. [26-A]

October 21, 1954, 10:00 A.M.

The Court: The Jury are all present, gentlemen, you may proceed—first, let me ask you, do you have any objections to Exhibits Three and Four?

Mr. MacGillivray: There is one that we have no objection to, your Honor, I don't recall the number, but it is the colored exhibit. The other we would have an objection to as it is a reconstruction by Mr.

Pehrson upon which there would be some conflict in the evidence.

The Court: Will you look at the exhibits and see which it is that you have objection to?

Judge Hawkins: Our objection goes to Number Three.

The Court: You have no objection to Number Four?

Judge Hawkins: None to Number Four.

The Court: Exhibit Number Four may be admitted. I will take under advisement the question of the admission of Exhibit Number Three.

(Mr. Pehrson recalled to the witness stand.)

G. A. PEHRSON

Direct Examination

(Continued)

By Mr. Therrett Towles: [26-B]

Q. Mr. Pehrson, I am handing you Plaintiff's Exhibit Number Nine, and I will ask you to state what that is.

A. That is our executed contract with the school district to perform the services of an architect.

Mr. Towles: I am offering in evidence Plaintiff's Exhibit Nine at this time. I am especially calling attention to the first paragraph on page one and also to paragraph six on page two.

Mr. MacGillivray: Defendant objects to the admission of Exhibit Number Nine on the basis that it is entirely immaterial, it is a contract between the

(Testimony of G. A. Pehrson.)

school district, School District 82 and the Plaintiff Pehrson to which the defendant is not a party and the defendant is not bound by any terms of this contract.

Mr. Towles: It is for the purpose of showing the authority that Mr. Pehrson had to go on the grounds and to supervise the construction of that building.

Mr. MacGillivray: For that purpose we will stipulate that Mr. Pehrson was the architect for School District Number 82 and that as an architect he had full authority to go on that ground where the school was being constructed. [26-C]

The Court: With that admission the objection to the exhibit will be sustained.

Q. Mr. Pehrson, who directed you to go up the ladder on the day of the accident?

A. Mr. Donald Hurst, trustee for School District Number 82.

Q. For what purpose did you go up the ladder?

A. The purpose was to check some work that he considered was not in accordance with the contract.

Q. But you never got there?

A. I never got there.

Q. I may have touched on this yesterday, but let me ask was this the only means of access to the roof at that time? A. Yes.

Q. Who used this ladder?

A. I used it, the workmen who had any work to do on the roof used it, in fact, anyone that had anything to do with the roof used that ladder.

Q. Had you been up and down this ladder be-

(Testimony of G. A. Pehrson.)

fore? A. Yes, several times.

Q. Had you had any difficulty on those occasions? A. No.

Q. Handing you Plaintiff's Exhibit Number Ten, I will ask you to state what that is? 27]

A. That is a photograph of the entrance to the Cocolalla school in its present condition.

Q. When was that taken?

A. It was taken Monday.

Q. By whom?

A. Ross Hall of Sandpoint, a photographer at Sandpoint.

Q. And were you present at that time?

A. Yes.

Q. You saw him take that picture?

A. Yes.

Mr. MacGillivray: We have no objection if it is offered.

Mr. Towles: We will offer it in evidence.

The Court: It may be admitted.

Q. That shows the conditions as they are at this time? A. That is right.

Q. At the time of the accident the grade was not as it is now? A. No.

Q. The cement walk was not in? A. No.

Q. The doors were not in? A. No.

Q. The window was in, was it? [28]

A. The window was in but not the glass.

Q. In connection with this ladder, Mr. Pehrson, what was the top of the ladder resting against?

A. The top of the ladder was resting against the

(Testimony of G. A. Pehrson.)

concrete wall of the main building of the school building, not against the concrete ledge that you see.

Q. At the time that you went up the ladder, how far was it from the concrete ledge?

A. I would have to say that I am not sure but from memory and observation at the time I would say about six inches away from the ledge—the right standard was about six inches away from the ledge.

Q. Could a ladder have been furnished you and the other workmen on the building that would have reached to the parapet wall of the building?

Mr. MacGillivray: We object to that as calling for a conclusion of the witness.

The Court: The objection will be sustained, it is not a question of what could have been furnished, it is a question of what was furnished.

Q. How long would such a ladder had to have been?

Mr. MacGillivray: We object to how long it would have had to have been.

The Court: Yes, the objection is sustained, the question is only with regard to this ladder. [29]

Q. Was this ladder fastened to the wall or to the ledge in any way? A. No, sir.

Q. Was it in danger of slipping or tipping?

Mr. MacGillivray: We object to that as calling for a conclusion of the witness.

The Court: Yes, that is correct, the jury will decide that question.

Q. It was not fastened?

(Testimony of G. A. Pehrson.)

A. No, it was not fastened.

Q. How about this ladder in its position with reference to the wall of the building and the concrete ledge, was it always in the same position?

A. No.

Q. What did you have to do before you went up the ladder?

Mr. MacGillivray: We object to that as calling for a conclusion.

The Court: It is not a question of what he had to do, but what he did do.

Q. What did you do?

A. Ordinarily you would——

The Court: Not what you would ordinarily, what did you do?

A. At that time I tried to move it in position as nearly as I could.

Mr. Towles: Your Honor [30] I am going to offer in evidence Plaintiff's Exhibit Number Eleven, which is the Idaho Minimum Safety Standard and Practices for the Building and Construction Industry—Code #2, Adopted September 15, 1947, by the Industrial Accident Board of the State of Idaho. In connection with these safety regulations, they were adopted by the Board pursuant to Sec. 72-1101 of the Idaho Code which authorized the Board to adopt reasonable, minimum safety standards, to make inspections in and about any place where workmen are employed. We have had these regulations certified by the Secretary of the Industrial

(Testimony of G. A. Pehrson.)

Accident Board and the authority in connection with these safety standards is——

The Court: Just offer it, Mr. Towles, and see if there is any objection. I am wondering if there is any more reason to put this in evidence than there would be to put the statutes or code of the state in. Isn't it a question of law that the Court takes judicial notice of in instructing the jury? It is just a little unusual to introduce the law in evidence, usually the court takes care of the law. However, if there is no objection, I will admit it, of course.

Judge Hawkins: I do have objection to this. However, I didn't want to rise and tell Mr. Towles until he had finished. [31]

The Court: What is your objection, Judge Hawkins?

Judge Hawkins: I have a number of reasons to object to this, your Honor, first, it is a promulgation of rules and regulations put out by the Industrial Accident Board regulating the conditions of employment between an employer and an employee, a situation which is remote entirely from the obligations that this defendant, the construction company, may have had to an independent architect who was going on the property in behalf of the school district and who was not an employee of the defendant, and upon which he is attempting to impose conditions which are recited by the Industrial Accident Board in an employer-employee relationship. Our position is that the common law applies to this case but not regulations that are

(Testimony of G. A. Pehrson.)

adopted by the Industrial Accident Board, the statute is quite clear on that. It is the working conditions that are here prescribed.

That is the fundamental objection to it. This man is an independent architect who has come in here and he does not hold any employer-employee relation. Likewise, if you are going to rely on official reports they have not complied with Section 9-317 that they plead the report or make it available in advance—it comes as a complete surprise, it has never been [32] pleaded in the pleadings and we have never had a chance to answer or allege the position of the defendant. If any reliance is had on a report of this kind it must be pleaded and made available and a copy supplied to the adverse party a reasonable time before the trial and that has not been done in this instance, but the principal thing is that the purpose of these regulations is to protect the employer-employee relationship and not one in the position Mr. Pehrson finds himself, going in as a licensee to make an inspection of the premises under an independent contract.

Mr. Towles: I think you are mistaken about his being a licensee, he was a business invitee on these premises. He was there because he had a right to be there.

The Court: Don't you agree with me, Mr. Towles, that this is a question of law for the court to determine in giving his instructions to the jury under the evidence here? Is there any more reason to introduce that book than there would be to introduce the statutes that authorize it?

(Testimony of G. A. Pehrson.)

Mr. Towles: I think so, because your Honor has to know what is in this.

The Court: But I am supposed to know that, Mr. Towles. [33]

Mr. Towles: If your Honor can take judicial notice of this——

The Court: ——I have always taken judicial notice of the laws of the State of Idaho or any document which is a part or authorized under the laws of the state of Idaho, I have always taken judicial notice of that and I have always taken care of it in my instructions to the jury. Perhaps this was not covered by the objection made but it seems to me—I have no doubt but what this matter has no more purpose here in this record than if you introduced the sections of the statutes that authorized it.

Mr. Towles: Then I understand your Honor takes judicial notice of this sort of thing?

The Court: Yes, I do.

Mr. Towles: And they become a part of the law.

The Court: That is the way I understand it. Does counsel have any objection to that ruling of the court?

Judge Hawkins: I have this objection, that the book is promulgated for an entirely different purpose.

The Court: I understand [34] that, but isn't that a matter for me to consider after the evidence is in and in preparing the instructions to this jury?

Judge Hawkins: Without the benefit of that

(Testimony of G. A. Pehrson.)

pamphlet, that is true and of course, it wasn't in the pleadings either.

Mr. Towles: It wasn't necessary to plead the law in the pleadings.

The Court: In order to hurry this matter along, I will take it under advisement, but my present thought is that I will not admit this book, but if I do decide to allow it in evidence I will rule on that later.

Mr. Towles: We have alleged in this complaint that ladder was not securely fastened and we have alleged other general grounds of negligence.

The Court: I will look over the pleadings and I will rule on it later. You may leave it with the clerk so that I may get it. I want to caution the jury again, Ladies and Gentlemen, you understand that these arguments, or what appears to be arguments between court and counsel, are no part of this trial and you will not pay any attention to them at all, you will not consider them as being any evidence in any manner and you are not to be influenced [35] by what has been said here. This is a part of the trial that the court takes care of and you will disregard any statement made by either the court or counsel for either party during these arguments.

Q. Was it any part of your duty to look after these appliances that were furnished you to use to get on the roof or any place else on the premises?

A. No.

(Testimony of G. A. Pehrson.)

Mr. MacGillivray: I object to that and move the answer be stricken as it is a conclusion.

The Court: The answer may be stricken and the jury are instructed to disregard it.

Q. Mr. Pehrson, where is Mr. Donald Hurst?

A. He is in Phoenix, Arizona.

Q. Do you know when he left here?

A. He left here on Friday the 8th of October.

Q. And you cannot bring him here?

A. I can't bring him here.

Q. Now, Mr. Pehrson, we have reached the point where you fell on the ground and were knocked unconscious. I will ask you what happened to you if you know. How long were you left on the ground before you were taken to Sandpoint?

A. When I came to I began to get my body in shape—I tried to see if I was hurt and I found that I couldn't move [36] my right leg, then I tried to raise myself—I was lying a little bit on the right side with my right leg under me. I tried to raise myself and I found that my left arm was very painful, so I didn't do any more but tried to adjust myself and just about at that time some of the workmen came off for lunch—it was just noon and some of the workmen stopped and looked at me and I said “Will you pull me off this pile of rubbish, and lay me on a flat piece of ground so that I can recover.” Some of them did, I cannot identify them because I was still about half dead. They pulled me off and laid me on the ground and by that time Mr. Hurst came off from the roof and I asked him

(Testimony of G. A. Pehrson.)

to go to the store which was about a block and a half away and call Doctor Wendle at Sandpoint to send an ambulance for me. I felt that it was not very serious and that he could perhaps fix me up quickly. Mr. Hurst did that and I laid waiting for the ambulance and it took between a half and three-quarters of the hour. By the time the ambulance got back my leg began to ache and it was very sore, it was not useable. I had no power in my right leg. The ambulance came and the driver and one attendant lifted me up and put me in the ambulance and then they drove off to Sandpoint and took me to the hospital. Doctor Wendle and Doctor Monson were both there waiting for me so I explained to them as good as [37] I could—I was still not myself quite—I explained what had happened. I remember distinctly that I asked them not to give this any publicity because I didn't want anyone to know that I was falling off the roofs or something like that, and he said that is hard to keep a secret like that here in Sandpoint. He said "We will take an X-ray and see what shape you are in." That is all I can remember. I was under the impression that I was on a stretcher in the ambulance entrance outside and not in the hospital, that is where the ambulance driver left me, but I don't know, I have been trying to think about the manner in which they took the X-rays. I thought that they had a portable machine out where I was lying but I found afterwards that it wasn't so. At that time I was unconscious but I would come to for a few minutes

(Testimony of G. A. Pehrson.)

—anyway, I don't know how they took the X-ray but Dr. Monson and Dr. Wendle told me that they took me to the X-ray room and took the X-ray and then put me back in the ambulance entrance again. I would say that I was not in the hospital except maybe when I was unconscious and have no memory about that. I came to slightly and Dr. Monson leaned over me and said "Pehrson, you are badly hurt, you are going to take a long vacation." Dr. Wendle came out with the X-ray and said, "You are badly hurt and we cannot do anything for you [38] here because we haven't the facilities. You will have to go to Spokane," and he said "If you will let me know what hospital you want to go to and what doctor you want, I will make the arrangements." I asked him to call the Sacred Heart Hospital and I asked him to make arrangements to get Dr. Adams because Dr. Adams had set four or five broken legs and arms for me before so I wanted Dr. Adams and he called Spokane and he also called my office and my office called Mrs. Pehrson—she happened to be at home and she started for Sandpoint immediately together with one of the men in the office. They arrived in Sandpoint before the ambulance but the ambulance came about two and a half or three hours after the X-ray was taken and I was still lying on the stretcher outside. The doctor had splinted me with pillow splints and tied my right leg up with ropes and tied my shoulder tight with pillows and ropes

(Testimony of G. A. Pehrson.)

and I was lying in that position when the ambulance arrived. The ambulance had arrived at that time and so they moved me into the ambulance, the driver and the ambulance attendant took the stretcher out from the ambulance and set it alongside the stretcher I was on and moved me over on that stretcher and moved me into the ambulance. The nurse came out about that time and before the doctor left he left instructions with the nurse to see that I was sent in as comfortable as possible. She came out and [39] gave me a hypo and said "I am going to make this good enough so that you will probably be comfortable all the way in to Spokane." We started out and during the trip I came to occasionally, just enough to see where I was at, that I was in the ambulance, and I dozed off again and I was unconscious when I got to the Sacred Heart Hospital. I got there approximately I guess about seven o'clock, I don't know but it was close to seven o'clock—I know that it was dark. Sister Amelia was down at the place with two other sisters—the registration sister was there, and they took me upstairs and put me to bed and at that time Doctor Brink came, Dr. Adams was out of the city, and so Doctor Brink came to the hospital. They had put me to bed in a room with two beds, a very small room and Dr. Brink said "This will not do, you will have to have a bigger room." He said "I will have to work on him and I will have a lot of paraphernalia in the room" or something to that effect. They

(Testimony of G. A. Pehrson.)

moved me to another room that had a bed for orthopedic work in it.

Q. What do you mean by orthopedic?

A. Bone work, it had bars across it and things so that you could try to work yourself on. They had, at that time, delivered the photograph or X-ray to the doctor and the doctor looked at it—their X-rays were taken [40] at Sandpoint and they took them on the ambulance while they were still wet, there were two of them and I think they are in as exhibits now. Dr. Brink looked them over and then he turned to me and he said “I don’t believe that we can fix it, the bone is shattered too badly.” and from the looks of the X-rays there is no way that we can fix it, the bone is shattered oo badly.” That made me feel kind of discouraged, and he said “We will take some more X-rays tomorrow, we will see what it looks like then and if it can be done we will decide what to do tomorrow.” By that time he looked at the bed I was lying in a regular hospital bed then, one that they crank up in the middle and he said “This will not do, Pehrson will have to have a straight bed.” And so I had to go through another operation of putting straight boards under me and that was terrible. I said to the nurse “If you are going to kill me, do it fast”——

Mr. MacGillivray: I don’t like to break into the examination, but if Mr. Pehrson will just leave out all the conversations with the doctors and the nurses and tell what was done——

(Testimony of G. A. Pehrson.)

The Court: Yes, we will get along if you will do that, Mr. Pehrson.

A. They changed my bed, they moved me and put some boards on my bed and made a straight bed for me to lie on. [41] After that was done, the doctor left and he said "I will be here in the morning," and he said "I have left instructions to get more X-rays." That was about all. My wife stayed right there, she stayed there with me until about nine o'clock and then she went home and I was alone and I was under terrible pains. It is impossible to imagine the pain. The only way anyone can find out the pains that I had to go through and the pains that I have had to live with and that I lived with for two months after that, the only way you can find that out is to break your hip. I never believed that there was anything so tortuous before this happened, it was terrible. Anyway, the sisters came in and asked me if there was anything that they could do for me and said that they would like to give me a hypo and I refused to take one and I said that I would rather try to get on without it if I could, and they gave me some fruit juice—I hadn't had anything since my breakfast. They gave me some fruit juice and something else, soup or something, but nothing that was poisonous—I didn't sleep that night but the hospital nurses were very kind. They came in every few minutes to look at me to see what kind of shape I was in. Previous to that, they had taken by blood count and also my heart beats and all of that, all through the regular hospital operations.

(Testimony of G. A. Pehrson.)

Anyway, the night [42] passed and the next morning Dr. Brink came in and the nurse tried to give me a bath but she gave that up because it was too painful. Then Doctor Brink came in with his nurse, his nurse from his own office, and he said "What we are going to do now is we are going to get your leg in position so that we can take an X-ray and see if we can do anything for you in this matter." So the nurse and the doctor bored a hole through my leg here and over here and put some stainless steel pins through it and then they rigged a system of pulleys, bolts and weights and tied a fifty-pound weight onto it and put my leg up in the air and that is the way that I was lying for a long time. Then the man came in with a portable X-ray machine and took six X-rays and that was about all that day. But I was still and I couldn't move, I was lying on my back and the nurses tried to make me comfortable with pillows, they have a system of doing that which is remarkable but just the same it was terrible to be there. The following day Dr. Brink came in and said "Judging from these X-rays, I think we can do something for you, it is not as bad as I thought when I saw the X-ray yesterday" and he was rather cheerful and he cheered me up and that is the way that it was left and he said—

How far am I to go, your Honor?

Mr. Towles: Just go ahead and describe it, Mr. Pehrson. [43]

A. He said "We are going to operate," and I

(Testimony of G. A. Pehrson.)

said "Operate, I never heard of anyone operating on bone fractures." And he said "Yes, we are——

The Court: Just leave out the conversation, Mr. Witness, and tell us what was done. Everybody knows that you were hurt, and you just tell us what was done at the time.

A. It is rather difficult not to say what was said.

The Court: Yes, I know it is difficult but you just go ahead and tell what you did and what they did.

A. Then after that I laid there for awhile and I asked if I could think over this operation because I didn't know what operating on the bone meant and so he said "Yes, I have already made arrangements for the surgery for Wednesday morning" and this was Monday and I said "Please cancel it because I would like to talk to Dr. Adams."

Q. Who was Doctor Adams?

A. He is—well, Doctor Adams is Doctor Brink's partner, he is the senior partner and he was the orthopedic doctor for the Shriner's Hospital for many years. He is an old orthopedic man in Spokane and I think everybody knows Doctor Adams.

Q. Will you explain it so that we can have it in the record, where these holes were drilled in your leg? [44]

A. Well, one hole was drilled right down through here (indicating) just above the joint and the other drilled here and the mark is still here.

Q. That is above the knee?

A. Yes, above the knee.

(Testimony of G. A. Pehrson.)

Q. Now then, we have gotten to the point of determining whether to have this operation, was it on the 19th of September that you were operated on? A. Yes, on the 19th.

Q. Now, who had returned to the hospital?

A. Who you say had returned?

Q. Who had returned to the hospital that you wanted to see?

A. No one had returned. Doctor Adams was—I will have to explain, your Honor——

Q. Just go ahead and describe what happened.

A. I was operated on Friday the 19th—two days before this, on the 17th after investigating all that I could about the operation, I said to Doctor Brink “I cannot stand it any longer, go ahead and operate,” and he said “Doctor Adams will be back Friday morning so we will operate Friday morning.”

Q. Did they operate on Friday morning?

A. That is right.

Q. Both of those doctors?

A. Yes, both of the doctors. [45]

Q. Do you know approximately what they did? First, I presume they gave you an anaesthetic?

A. All I know is that on the previous night they began to give me anaesthetic and at nine o'clock to prepare me for operation which means quite a lot of things to do. I couldn't eat anything that night and I was instructed not to eat anything for breakfast. About 7:30 the anaesthetic man came in—I believe three of them came in and gave the final

(Testimony of G. A. Pehrson.)

shot of something and I began to get kind of a little bit weak but at nine o'clock I was still conscious and at nine o'clock they came in and put me on the wagon and wheeled me over to the surgery and from then on I have no memory.

Q. When did you come to from the anaesthetic?

A. I didn't know anything, that is to recognize anything until one o'clock the following morning.

Q. How many hours?

A. That would be about sixteen hours.

Q. Did you recognize either of those doctors during the operation?

A. Just for an instant, I came to and I looked up and opened my eyes and I met the eyes of Doctor Adams and he turned, but he finally gave me—I guess it was some more anaesthetic because I was out again.

Mr. Towles: Your Honor, if we may be permitted to have this witness step down [46] we have another witness here, Mr. Henry George, he is from Spokane and must get back.

The Court: Is he a doctor?

Mr. Towles: No, he is not a doctor, he is a contractor, the contractor on the Coliseum in Spokane, and I think we could get through with him without too much trouble in a very short time.

The Court: Did you have any objection to that?

Judge Hawkins: No, we have no objection.

The Court: Very well, you may proceed. You may step down, Mr. Pehrson.

HENRY GEORGE

called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Funkhouser:

Q. Will you state your name to the court and jury? A. My name is Henry George.

Q. Where do you live?

A. I live in Spokane.

Q. How long have you lived in Spokane?

A. A little over forty years. [47]

Q. And what is your occupation?

A. A building contractor.

Q. How long have you been employed in the building business? A. About forty years.

Q. What are some of the buildings that you have constructed in the Inland Empire?

Judge Hawkins: We will admit that he is a building contractor, and a good one.

Q. Will you name some of the buildings?

A. We have built the Fox Theater, the Davenport Hotel, that is, a part of the Davenport Hotel, the Student Union Building in Moscow and the Student Union Building in Pullman and the Library in Pullman—we have built a hundred million dollars worth of buildings in the Inland Empire.

Q. Do you know Mr. Pehrson, Mr. G. A. Pehrson, the plaintiff in this action? A. Yes, I do.

Q. How long have you known Mr. Pehrson?

A. Forty years.

Q. Have you and he ever worked on the same

(Testimony of Henry George.)

building? A. Yes.

Q. And his duties were **what**?

A. He was the architect.

Q. What are the duties of an architect so far as the building is concerned? [48]

A. He plans the buildings, makes all of the drawings, all of the details. He has to inspect the building and see that it is properly constructed. His duties are all fairly written up in the contract.

Q. In making these inspections, that is, in making the rounds is there more or less danger involved for the architect?

Mr. MacGillivray: This is objected to as incompetent, irrelevant and immaterial and calling for a conclusion of the witness. I presume that there are dangers on all construction jobs.

The Court: Yes, that is sustained.

Q. Though there may be some dangers involved is it necessary to make these inspections in any event? A. Yes, sir.

Q. Are you familiar with the rules and regulations adopted by the states, by the respective states where you work, are you more or less familiar with them?

A. We have to be acquainted when we start on a new job.

Q. Have you ever put up any buildings where ladders were used?

A. All of them have ladders.

Q. You are building what building at the present time?

(Testimony of Henry George.)

A. We are building a lot of buildings.

Q. In Spokane? [49]

A. We are building a store building for Woolworth's; we are building a garage, and also we are building the Coliseum.

Q. Yes, a little building called the Coliseum. How much is that costing?

A. Well, it is quite a building.

Q. Do you use ladders on that, on all of these buildings? A. Lots of them.

Q. Will you tell the court and jury just what precaution is necessary when you use ladders?

Mr. MacGillivray: Just a minute, we object to that as calling for a conclusion. Of course, it would depend on where the ladders are used, what they are used for, the height of the ladder.

The Court: Yes, it seems to me there would be some difference in the construction we are discussing here and the Davenport Hotel and some of those other buildings. The question here is in relation to a building of this kind.

Q. Yes, as to the use of ladders, how long should they be?

Mr. MacGillivray: That is objected to as calling for a conclusion and an opinion of this witness and it would be immaterial here. Of course we know if you have to go up fifty feet you would have a fifty-foot ladder; if you have to go up ten feet you might have a ten-foot ladder. [50]

The Court: Yes, it seems that you are asking a question that would be rather hard to answer. I

(Testimony of Henry George.)

don't know, but it seems to me that there are ladders of all lengths. But, he may answer, I will permit the answer.

A. A ladder should be long enough to be safe to go to the point you want to get to. If it is three feet high you need a step, if it is six feet you need a ladder.

Q. As to the setting on the ground, how should ladders be set on the ground?

A. A safe rule would be that over the six feet the ladder should be tied both top and bottom, or held by another man.

Q. Is rubbish, broken tile, and so forth, supposed to accumulate around the base of the ladder and around the building? A. No, sir.

Mr. Funkhouser: You may take the witness.

Cross-Examination

By Mr. MacGillivray:

Q. Mr. George, have you ever built any one-story school buildings? A. Yes, sir.

Q. As a means of access to the roof of one-story structures [51] ladders are universally used, are they not?

A. They used to be, but sometimes they use scaffolds.

Q. You use scaffolds on multiple story buildings?

A. We use them on one-story buildings, it depends on the outside finish.

Q. It is customary to use ladders, is it not?

(Testimony of Henry George.)

A. Yes, we use ladders to get to the roof. We have ladders down there on the Coliseum building now, too, lots of them.

Q. How many ladders have you down on the Coliseum building? A. How many?

Q. Yes.

A. Well, our work is about cleaned up there now, but I would say there is a dozen of them there and some of them fifty feet high.

Q. They are various lengths?

A. Some of them are fifty feet.

Q. And down to what? A. Ten.

Q. Are those portable ladders?

A. Yes—the long ones are not portable.

Q. The short ones, say ten or fifteen or twenty feet? A. Yes, they are portable.

Q. And you use those dozen ladders at various places around the Coliseum? A. Yes, sir. [52]

Q. And in using them at various locations around the building do you mean, Mr. George, that you always tie the ladders at top and bottom?

A. Yes, sir, if I find one that isn't, someone gets called. It is a safe rule. I have had two falls myself and I don't want any more.

Q. You had two falls from ladders?

A. Yes, sir.

Q. When was the last one, how recently?

A. Oh, twenty or thirty years ago.

Q. In the construction business it frequently happens that men fall from ladders, do they not?

(Testimony of Henry George.)

A. Yes, they do, that is why we have to tie them down.

Q. And it still happens, does it not?

A. It hasn't happened on one of my jobs for a long time.

Q. But it happens in the construction business, does it not, to this day? A. Yes.

Q. You have known Mr. Pehrson for about forty years? A. Yes.

Q. And he has been the architect on many jobs that you have had?

A. Well, we haven't done a job for him for about fourteen years.

Q. Well, previous to that have you been on the same job?

A. Yes, he was architect on the Florence Hotel at Missoula—he [53] was the architect on the Buick building that we built in Spokane. He was the architect on the St. Augustine school, but for the last ten or fourteen years we have not been on any of his work.

Q. Mr. Pehrson has been on these inspection trips and on construction work and he knows all about construction work, is that not correct?

A. I think so.

Q. And he knows or should know, all about the use of every kind of ladder on construction work?

A. Yes, he writes the specifications.

Q. In other words, there is no one that should know about the use of portable ladders on construction jobs any better than Mr. Pehrson?

(Testimony of Henry George.)

A. That is right.

Mr. MacGillivray: That is all.

Mr. Funkhouser: That's all.

R. C. WURST

called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Funkhouser:

Q. Will you state your name to the court and jury?

A. R. C. Wurst, they call me Bob.

Q. Where do you live, Mr. Wurst?

A. Couer d'Alene. [54]

Q. How long have you lived in Couer d'Alene?

A. About six years in Couer d'Alene but I have lived near since 1919, that is, in the vicinity of Hayden Lake.

Q. Over one-third of a century? A. Yes.

Q. What is your occupation?

A. I am contracting.

Q. How long have you been contracting?

A. For six years.

Q. What kind of buildings?

A. Residential, some commercial, and small industrial.

Q. Have you ever worked with Mr. Pehrson on buildings? A. On one job.

Q. Was that comparatively recent?

A. In 1948 and 1949.

(Testimony of R. C. Wurst.)

Q. In the construction of buildings, do you try to comply to the best of your ability, with the rules and regulations set forth by the building code?

Judge Hawkins: We object to that as calling for a conclusion of the witness.

The Court: The objection will be sustained.

Q. Have you ever built buildings where ladders were involved?

A. On most of the jobs we use ladders.

Q. Do you or do you not try to supply ladders of sufficient [55] length to reach the buildings without difficulty, or where you intend to go on the building?

A. Yes, sir.

Q. As to the allowing of waste material to accumulate around the building at the base of ladders, do you try to keep that all removed?

Judge Hawkins: We object to what he tries to do, the question is what was done in this case.

The Court: That is true, but I am going to allow him to answer.

A. We keep a clean-up man on the job, and the rules state——

The Court: Never mind what the rules state, just what you did and what you do.

A. We keep the rubbish away from the building and normally piled up away from the building and we normally haul it off when it accumulates in a truck load.

Mr. Funkhouser: You may take the witness.

(Testimony of R. C. Wurst.)

Cross-Examination

By Judge Hawkins:

Q. But that rubbish does accumulate in piles does it not, Bob, and then you move it when you get a pile?

A. We gather it up normally in the course of the work in a day in a large pile away from our work. [56]

Q. But there are accumulations that you put in a pile during the day, you don't pick up each scrap as it falls, and dispose of it as it falls, but you let it accumulate and then move it in an orderly fashion in a wheelbarrow or some other conveyance?

A. Yes, you get an accumulation.

Q. In piles?

A. In piles under those circumstances, yes.

Q. As it falls it might scatter itself around the edge of the building and then you will scoop it up or shovel it up in piles and haul it away?

A. You usually haul it in wheelbarrows, haul it away as it accumulates.

Q. But you do get piles of scrap material and things of that kind that accumulate until it is moved? A. That is true.

Q. Now, in the use of ladders on the buildings that you have worked on are all of your ladders equipped with apparatus to fasten them at the top and at the bottom?

A. Practically all of the jobs that I have been on are one-story jobs.

(Testimony of R. C. Wurst.)

Q. One-story jobs? A. Yes.

Q. What kind of a ladder do you use on a one-story job?

A. We use stepladders, especially on inside work where you have level floors, and on the outside we use lean-type [57] ladders.

Q. Rung ladders?

A. Yes, rung-type ladders.

Q. And by lean-type, you mean that you lean them against the buildings and walk up?

A. Yes, you lean them against the building and walk up.

Q. And they are the regular type of ladder, lots of them are made of two by fours with steps nailed on or inserted in?

A. Yes, or manufactured ladders.

Q. And you use those ladders, that type of ladders, on one-story buildings to get to and from the roofs to work or to inspect the work on the roofs?

A. Yes.

Q. Is a sixteen-foot ladder an uncommon length of ladder to be used on a one-story building?

A. No, a sixteen-foot ladder is a very common length of ladder.

Q. Now those ladders, on working around a one-story building or structure, you move them from place to place as the need requires, do you not?

A. Yes.

Q. And you don't fasten them to the building each time you use them?

A. If we have solid footing—we very seldom

(Testimony of R. C. Wurst.)

fasten the top unless you can't secure them at the bottom—if [58] we have solid footing at the bottom we never or very seldom fasten them on top.

Judge Hawkins: I think that is all.

Redirect Examination

By Mr. Funkhouser:

Q. And if your ladders are not fastened, they are substantial enough to reach the top of the building, are they not? A. Yes.

Q. And standing on a firm foundation, are they not? A. They are on a firm foundation.

Mr. Funkhouser: That's all.

Judge Hawkins: That's all.

(Mr. Pehrson recalled and direct examination continued.)

G. A. PEHRSON

Direct Examination

By Mr. Towles:

Q. Mr. Pehrson, we had reached the point where you had been operated on, and you had been under anaesthetic from nine o'clock in the morning until one o'clock at night? A. Yes.

Q. Now then, when you came to were you in a bed at the hospital? A. Yes.

Q. How long did you remain in bed and under what conditions, until you were able to sit up?

A. I wasn't allowed to sit up, I had to lie on my

(Testimony of G. A. Pehrson.)

back for five weeks. I couldn't move any place because of the [59] fact that they wouldn't let me move. My leg was in the air with weights on my leg and the nurse would try to clean me up once in awhile—every morning—but she couldn't turn me over and she would have to reach under my back, the position I was in for so long made my back terribly sore, it was just agony. I got no rest, because I couldn't, I couldn't get any sleep, it was too painful, particularly a point on my back got so terribly sore and the nurses tried to relieve it by using rubber rings on it. I don't know just how to say it but you lie in bed for five or six weeks and can't move, the whole system gets in terrible pain, I don't know how to tell you except that it was so painful it was unbearable, but I had to live through it.

Q. And what happened when they tried to sit you up in a chair?

A. After about six weeks, the nurse that was with me constantly—after the operation I had two nurses that were on special, nurses that were with me constantly and after one week Doctor Adams said "I don't believe that we need more than one nurse" and he said to discharge one and so I kept one nurse from then on during the entire period that I was in the hospital and that lady took care of me, she came in in the morning at seven o'clock and tried to give me a bath, she tried to do everything for me and she left at three o'clock [60] and from then on my wife would sit with me most of

(Testimony of G. A. Pehrson.)

time, besides the sister with me every day from three o'clock to nine o'clock and the regular hospital nurses took care of me during the other hours.

Q. Now then, let's get to the point of where they tried to sit you up in a chair.

A. In about six weeks I was told that I would have to try to get up in a wheelchair. One day the nurse moved in a wheelchair and she called in two assistants, one man and another nurse and they lifted me up and put me in a wheelchair. That was worse than lying in bed, and so I fainted, but I came to quickly but it was so painful that I didn't have much interest in the wheelchair but the doctor and the nurses said "You must be up, it will help you, if you lie there you will be useless entirely." They took me up a few minutes every day. They had to get three people to lift me out of bed and three people to put me back in bed.

Q. And that went on in the hospital until what date?

A. On the 4th of November the doctor and the nurse had a consultation and decided to let me try out a walker, it is an apparatus like you see babies use when they start to walk. The nurse wheeled the walker in and she tried to help me turn around in bed and practically lifted me into the walker. It has a seat and a bar [61] on each side and it has casters under it and you can move yourself, but I was instructed not to use my right leg at all, I couldn't touch my right leg to the floor so I at-

(Testimony of G. A. Pehrson.)

tempted to move myself with my left foot as much as I could but the success was poor. After three days, and all of that time I was in the most terrific pain, the doctors decided that I could go home, on the 8th of November. The nurse, a special nurse, and my wife came and took me home in the ambulance.

Q. How long were you at home before you went back to the office?

A. After about a month at home the doctor gave me some crutches and said "Try these out and see what you can do." I did, and I finally managed to move around a little bit on the crutches and two months after I got home—on the 12th of December, my wife took me downtown in the car and I managed to get to the office.

Q. How long have you been under the care of those surgeons?

A. I am still under their care.

Q. Do you know how long you were totally disabled on account of this accident?

A. Well, if it wasn't for the horse constitution that I have got, I would still be useless.

Q. What was the condition of your health at the time of the injury? [62]

A. Fine.

Q. You were a strong, robust man?

A. As healthy as I ever have been.

Q. Do you know yourself whether or not your injuries are permanent?

A. The doctor tells me they will be——

The Court: Now just a minute, Mr. Witness——

(Testimony of G. A. Pehrson.)

Q. I asked if you knew of your own knowledge.

A. They will be, I am positive, because I cannot use my leg, I cannot step on it. I don't know what the future is going to bring, but I have resigned myself to the fact that I am going to be a cripple for life.

Q. What effect have these injuries had on your earning capacity as an architect?

A. When I got hurt we had five million dollars worth of business and now I haven't got any.

Q. And what have you had to do in your office in the way of letting people go who were in your employ?

A. You say what did I have to do?

Q. What did you have to do about letting the draftsmen go that were in your office?

A. I had to lay them off.

Q. How many men did you have working for you at that time?

A. I had eight draftsmen, a secretary, an accountant and one man outside. [63]

Q. Who do you have now in your office?

A. I only have the secretary and accountant.

Q. You testified that you had five million dollars worth of business when you had this accident, what do you mean by that, will you explain it to the jury?

A. That means the business that we had in the office, we had twenty projects. We had two schools at Mountain Home, we had one at Mackay, we had the Bonner County Schools—it meant the gross value of the business that we had, it was five mil-

(Testimony of G. A. Pehrson.)

lion dollars' worth of business that we had at the time of the accident.

Q. That was the amount that was involved in the contract, was that it? A. That is right.

Q. Can you give us a rough estimate of your earnings for the past three years prior to the time of your accident?

A. The average was approximately eighteen thousand dollars a year.

Q. Have you secured any new business since the accident? A. No.

Q. Why not?

Mr. MacGillivray: That is objected to as calling for a conclusion of the witness. There might be several factors involved.

The Court: Yes, but I will let him answer. [64]

A. Specifically I can mention four jobs. Four projects that I was told that I could not take them on because I was crippled. They were large projects, one project was an elementary school at the Mountain Home Airbase. I had done two schools for the district before but I was told that due to my condition they could not let me take it on. There was two stores for Newberry's, one at Bellingham, Washington, and the other at Salem, Oregon, and they said "We cannot depend on you because you can't get around." Before the accident I had made some preliminary drawings for a hospital at Clarkston, Washington, a \$750,000.00 job—the decision was by the Board for the selection of the architect. I was assured of the project by the board, but the

(Testimony of G. A. Pehrson.)

selection was made one week after the accident and I sent one of our men down and they told him that due to the accident they could not consider us, and so I know that I lost those and two other jobs, two and a quarter million dollars. I cannot say for sure about them, but I know that usually when I get called in for a consultation on two different times that I usually cinch the job, but I lost them.

Q. Mr. Pehrson, are you fitted for any other calling other than an architect? A. No, sir.

Q. Handing you Plaintiff's Exhibit number twelve, will you please state what that consists [65] of?

A. That is a statement of my hospital bill, the doctors' bills and the nurses' bills that took care of me, and the cancelled checks.

Q. Does it have a total there? A. Yes.

Q. And do you know that these are the costs of the expenses in connection with this accident?

A. Yes, sir.

Mr. Towles: I will offer this exhibit in evidence.

Mr. MacGillivray: May we have until after lunch to examine this?

The Court: I will admit it at this time and then I will strike it if there is any reason to do so. I will take judicial notice of the life expectancy of a person of the age of the plaintiff in here and I will give that in an instruction to the jury.

Mr. Towles: Then I don't need to put that in?

The Court: No, you don't need to do that. I will state that to the jury.

(Testimony of G. A. Pehrson.)

Q. In connection with these injuries are your pains in the right hip continuous or not?

A. Up until about four months ago they were continuous—they were continuous day and night, but up to a certain [66] point I got so used to them that I could stand it—in the first place I am strong-minded and I made up my mind that they would not bother me but they were continuously painful, but they did ease up about four months ago and that lasted until, I think it was last Thursday. During that time I could sit without feeling anything back in here (indicating) and I could lie in bed without feeling anything, but after last Thursday the pain came back and it has been there. It has been very painful during the last week. Before that time I was at least much easier at night, but last week it has been kind of bad and now, I will go a little further and say that when I step on my leg it is terribly painful, that is why I cannot walk good now.

Q. Will you show the jury how you walk?

A. Yes. (Demonstration to the jury.)

Q. Do you suffer pain when you walk?

A. I suffer pain every time I step on my leg; that is why I limp so badly. I favor it and I try to put the weight off that leg.

Q. And what about your shoulder?

A. Only when I try to lift and, say, from this point (indicating) on, it is terribly sore. After a night's sleep it is terribly painful in this way, I

(Testimony of G. A. Pehrson.)

can't move it good. After I get it limbered up it is not so bad.

Q. You mentioned last Thursday, what happened last [67] Thursday?

A. I, at your request, went to be examined by Dr. Wallace and I went to his office.

Q. Who is Dr. Wallace?

A. He is a bone specialist, an orthopedic doctor.

Q. Was he acting as doctor for the defendant?

A. I think he was for the defendant.

Q. You went to him? A. Yes.

Q. And what did he do?

A. He examined me thoroughly.

Q. What did he do in the way of x-ray?

A. He said he would have to have two x-rays.

Q. How did that affect you?

A. Well, I have to say this that every time I had an x-ray the bones and muscles became numb and painful and that happened again when I had this on Thursday.

Mr. Towles: That is all for the present.

The Court: We will recess at this time until one-thirty this afternoon.

October 21, 1954, 1:30 P.M.

Mr. Towles: I have another question I desire to ask if I may?

The Court: You may do so.

Q. Mr. Pehrson, at the time of your accident will you state what the condition of the ground was around the base of [67-A] this ladder?

(Testimony of G. A. Pehrson.)

A. The ground, as I previously stated, had been filled up to a certain height from material from the excavation. On top of that it made a sort of little hill or a raised portion at the point where the ladder stood. Back of the ladder, particularly along there, was piled some rubbish, some broken boards, and some broken concrete blocks and also some cuttings, and some of those boards were also in front of the ladder, so that when you were ready to climb up the ladder you had to step on some of the boards. And I will have to state here that I don't believe that at any time I saw the exact position of the two standards of the ladder. The ground in there was so filled up with short pieces of lumber and rubbish that I don't think at any time that I saw the two standards of the ladder on any particular part of the ground there. That pile was just rubbish and was intended to be hauled away.

Q. Did you notice that before the accident?

A. Yes.

Q. How long?

A. Well, I cannot answer that definitely but—no, I won't attempt to answer that as to how long, but it was there before the accident.

Mr. Towles: That is all, you may [68] cross-examine.

Cross-Examination

By Mr. MacGillivray:

Q. Mr. Pehrson, you have been practicing your profession for about fifty years? A. Yes, sir.

(Testimony of G. A. Pehrson.)

Q. And during that period of time you have supervised the construction of about how many buildings?

A. I think probably in that time I have supervised somewhere between sixteen hundred and two thousand.

Q. And those were buildings from one-story structures up to buildings as big as the Davenport Hotel?

A. Yes.

Q. One of your duties as an architect is, after the plans and specs are drawn and the contract let, is to make periodic inspection tours of the construction to see that it is progressing in accordance with your plans and specifications?

A. Yes.

Q. And when you make those inspection trips you inspect the buildings from top to bottom?

A. That's right.

Q. On a ten-story building you would start at the top and work to the bottom, or vice-versa?

A. Yes.

Q. And on a one-story building you inspect the foundation, the walls, the interior, the roof, and all parts of the building? [69]

A. Whatever is completed to a point that it is necessary to check.

Q. And during these fifty years you have used ladders, portable stepladders, in the inspection of, would you say on thousands of occasions?

A. Yes; I would say so.

Q. All types of ladders and of different heights?

A. Yes, sir.

(Testimony of G. A. Pehrson.)

Q. So from that experience you are thoroughly familiar with the use of all types of ladders used on construction projects?

A. I thought I was.

Q. Well, you were, weren't you?

A. Yes; I would say that I was.

Q. And from that fifty years of experience, and the using of stepladders during that time, you knew all of the problems that anyone would encounter in using stepladders, didn't you? A. Yes.

Q. Had you ever fallen from a stepladder before, Mr. Pehrson?

A. Yes; I had fallen, I would say, six or seven times.

Q. Six or seven times? A. Yes.

Q. And that is over this period of fifty years?

A. Yes. [70]

Q. And was that from losing your balance while climbing or from different causes?

A. It was mostly in losing my balance.

Q. You say that you have broken your arms and your legs and that Doctor Adams took care of you. Now, then, was that from falls from ladders previously? A. Yes.

Q. And is this the first time you have ever had a lawsuit over falling from a ladder, losing your balance? A. I never had a lawsuit before.

Q. The contract was made the latter part of March in 1952 between the school district and the Lauch Construction Company?

A. I think the contract was in May.

(Testimony of G. A. Pehrson.)

Q. How soon after the contract was signed, Mr. Pehrson, did the construction start?

A. I believe immediately.

Q. And first they do the excavating, pour the foundation and then build up from there?

A. That is right.

Q. And immediately after the construction started did you start to making your inspection trips to the site? A. Yes.

Q. About how often?

A. About once a week, our agreement is with the owners that we cover the job once a week. [71]

Q. Did I understand that you have five jobs in this locale that you inspected on each of these trips up here?

A. We had two in Priest River and one in Sagle.

Q. Were they school jobs?

A. Yes; they were all for the Bonner County School District.

Q. Were they all one-story buildings?

A. Yes; excuse me, the remodeling of the Priest River was a two-story elementary school building and the remodeling of the Clark Fork school that was a part of a two-story building.

Q. What other one-story school projects did you have up this way at that time?

A. That was the only one-story project here, I had some in Southern Idaho.

Q. Didn't you have a one-story school building up at Pack River that was being constructed at that time? A. Yes; that was the one.

(Testimony of G. A. Pehrson.)

Q. Mr. Pehrson, the foundation on this Cocolalla school, how deep was it?

A. Part of it was down—well, the plans showed it four feet and six inches but a portion of it had to be carried a little deeper because the formation was such that we couldn't have the footings that high, a portion of it was carried on perhaps about a foot deeper.

Q. What was the depth of it in there by the front entrance, [72] on the front of the building, what was the depth of the foundation there, from the brickwork down?

A. I think at that point the plans showed it four feet and six inches and I think that we added a foot, but I am not sure about that but it was close to that.

Q. And on one of these exhibits, I think it was on that scale model that you have—you have a line across the foundation designated finish line?

A. Yes.

Q. Do I understand that on September 12 that the ground level was about three feet below that finish line? A. As near as my notes show.

Q. Mr. Pehrson, to refresh your recollection, don't you recall that Mr. Richardson of the Lauch Construction Company had his large equipment in there some considerable period of time before the date of your fall and that he backfilled and leveled it out there and that there was no grading after your fall, except some fine hand grading?

(Testimony of G. A. Pehrson.)

A. No; that isn't correct.

Q. Are you sure of that?

A. Yes; I am sure that isn't correct.

Q. On September 12th, if I get you correctly, Mr. Pehrson, let me ask you was that slab in there at the front entrance?

A. Yes; I think it was. [73]

Q. Then, if I understand you, with that slab in, getting off that slab at that time you had to step down three feet?

A. No; there was a plank laying on the steps down to the grade, to walk up on.

Q. You mean the plank was on an angle?

A. Yes; on an angle, on the slab to the ground in front of the steps approximately three feet below that slab, yes.

Q. Then, Mr. Pehrson, about when did you make your first inspection of the roof on the Cocolalla school?

A. Oh, I think a week prior to the 12th of September, probably two weeks.

Q. I thought you stated that you had been up that ladder many, many times onto the roof?

A. Well, I had been up that ladder, I wouldn't want to say definitely how many times but I think I must have been up there three or four times—two or three or four different times. That was in September and I think I was probably up there altogether about ten times.

Q. Prior to September 12th, the date of this

(Testimony of G. A. Pehrson.)

fall, you had been up on this roof, the roof of that building, at least ten times?

A. I would say so; yes.

Q. And that would be inspecting the work on the parapet walls and the roofing as it [74] progressed?

A. On some part of it, yes. There was a concrete bond beam over the windows that had to be looked after and then after they began to put some of the partitions in and some of the glued laminated beams in, and all of that had to be looked after during that period of time every so often.

Q. And during these periodical inspection trips you had been all around the outside of the building, that is, prior to the day of your fall? A. Yes.

Q. Mr. Pehrson, do you recall that they had three ladders around that building, all of which were used to get to the roof of that building?

A. There was one ladder that was used to get to the bond beam and there was no ladder at any time, to my knowledge, that went up to the roof.

Q. Mr. Pehrson, on the north side don't you recall about a twenty-foot ladder used to get to the roof there? A. No; not to my knowledge.

Q. Would you say there was not such a ladder there used to get to the roof?

A. Not to my knowledge.

Q. Do you recall any ladder on the premises now that had been used and was used to get to the roof on the west side of the building?

A. No; not to my knowledge. [75]

(Testimony of G. A. Pehrson.)

Q. And to your knowledge the only ladder on the construction site was the ladder on the south side of the building that you used on September 12th? A. Yes, sir.

Q. And is that the only one that you ever used?

A. That is the only one I ever used.

Q. And that is the means of access that you had used to get to the roof at least ten times prior to the date of your fall? A. I would say so.

Q. Mr. Pehrson, you said that on different occasions the ladder was never in the same position, will you explain to us just what you mean by that?

A. Yes; it was mostly left in the position that the previous man had left it, when a man climbed off that ladder under any kind of procedure it probably moved, it did for me. I had to be careful to see that I didn't fall.

Q. Had you ever seen the ladder in front of the canopy, leaning against that canopy?

A. No, sir.

Q. And what do you mean by the ladder being in different positions then is that when John Jones or some one of the laborers came down off the ladder he might have moved the ladder so that it was not balanced properly and it would remain in that position, is that what you mean? [76]

A. That is right.

Q. In other words, from your experience, you often knew that the ladder might be standing in some defective position, is that right?

A. Yes; I will have to say that it is second

(Testimony of G. A. Pehrson.)

nature for us to accept ladders out of position and we try as much as possible to right them before we use them.

Q. And on each and every occasion or time prior to September 12th, had you manipulated the ladder before you used it to see that it was solidly set on the ground and solidly set against the building before you used it?

A. I cannot answer that it was solidly on the ground. As I said on my direct examination the ground was covered with rubbish and some material there and it was hard to see it. I recall, as I have said to you before, that when Mr. Hurst started up the ladder, I felt it move.

Q. I am talking about previous times, Mr. Pehrson.

A. Yes; on previous times if it appeared that it wasn't right, you would try to move it.

Q. On previous occasions, each and every time that you used that ladder, Mr. Pehrson, did you make sure that it was set solidly and firmly on the ground? A. No; I don't think I have.

Q. By that, Mr. Pehrson, do you mean that on different occasions you just took a chance that it wouldn't slip and that you wouldn't fall? [77]

A. I would say so.

Q. You would take a chance?

A. I think that's right.

Q. To check the ladder and see that it was set on the ground or to set it on the ground and to be sure that it was firmly fixed and firmly set upon the

(Testimony of G. A. Pehrson.)

ground, would be a matter of two or three minutes' time? A. It would, but I believe——

Q. That is all; you have answered it; it would take two or three minutes to see that it was set solidly and steadily on the ground before you used it? A. I would like to qualify that——

The Court: You just answer the questions, Mr. Witness; your counsel will take care of whatever is necessary.

Q. Would it take any longer?

A. No; it probably wouldn't take over ten seconds.

Q. Then on each and every occasion previous to September the 12th, when you used that ladder, did you see that it was set in a straight line and set firmly against the building before you stepped on it?

A. I would say that I did not inspect it that close.

Q. And in that regard, Mr. Pehrson, also on occasions prior to September 12th, you had just taken a chance that it was set well enough against the building that you would not lose your balance and would not fall? [78]

A. I think that is right.

Q. Then from your experience in using ladders thousands and thousands of time, you, of course, realize that if the ladder was off balance, if one standard was resting on the ground and one standard against the building, there was a probability or at least a good possibility that you might encounter trouble in going up the ladder? A. Yes.

(Testimony of G. A. Pehrson.)

Q. Now, going to September 12th, you went up to the site after talking at the Cocolalla Store to Mr. Hurst who was one of the school board members, is that right? A. Yes.

Q. Did I understand that you just dropped in to the store to tell Mr. Hurst that you were on the job to make an inspection?

A. Yes; that is right.

Q. You went up to the building and made an inspection of the ground floor, the downstairs portion of the building? A. Yes.

Q. Had you gone clear around the building?

A. Yes.

Q. Did you see these other two ladders?

A. No.

Q. Did you see the other ladders on the north and the west side of the building? [79]

A. No; I didn't see any ladders up to the roof.

Q. Did you see any lying on the ground?

A. I don't remember whether it was on that trip or not but I saw a ladder that was used to reach the bond beam when the concrete was poured in the bond beam and I used that ladder sometimes but that didn't go to the roof. That just reached up to the bond beam and the bond beam was about a foot and a half above the windows.

Q. This ladder that we are speaking about was a sixteen-foot ladder? A. As far as I know.

Q. And do you recall that the side standards were made of two by fours? A. Yes.

(Testimony of G. A. Pehrson.)

Q. And the rungs, about what distance apart were they?

A. I couldn't answer definitely on that, but I think it was the standard type, about fourteen inches.

Q. And the rungs were constructed of one by fours? A. Yes.

Q. And the ladder itself was soundly and solidly constructed, was it not?

A. It was the type of ladder that you would expect to have in a sixteen-foot ladder.

Q. It was a soundly constructed ladder? [80]

A. Yes.

Q. And it was sound and sufficient to carry you or anyone else up that ladder?

A. That is right.

Q. As I understand it, after you made the inspection on the ground floor, Mr. Hurst said that he wanted you to see something on the roof?

A. Yes.

Q. You didn't know what it was?

A. I didn't know what it was, it was something about the roofing.

Q. When you were inspecting on the ground floor or level inside of the building, there were a number of workmen in the building? A. Yes.

Q. Do you recall when you walked outside, did you go out the front door when you left the inside of the building?

A. Yes, I am pretty sure we did—well, well,

(Testimony of G. A. Pehrson.)

no, we may have gone out to the multi-purpose room, I am not sure about that.

Q. When you and Mr. Hurst went up the ladder, when Mr. Hurst started up, do you recall a couple of cement finishers on the foundation wall to the left of you working there?

A. I don't recall that.

Q. You mean that they were not there or that you don't [81] remember?

A. I can't remember, there were so many around there, I didn't notice that very much.

Q. There were some workmen immediately inside the door of the building, you know that?

A. Yes.

Q. And then, as I understand it, Mr. Hurst went up the ladder first? A. Yes.

Q. When Mr. Hurst was climbing the ladder, what did you do, did you brace the ladder for him?

A. No, I just stood there and leaned against—well, I had my hand on the ladder, I have a habit of never going on a ladder with another man on it so I just waited there. I stood there and held onto it.

Q. Which hand did you have on the ladder?

A. My left hand.

Q. That was not for the purpose of bracing the ladder, was it? A. No.

Q. Then Mr. Hurst went up the ladder and stepped off onto the balcony or the ledge or whatever we call it, and then he stepped up over the parapet wall, is that correct?

(Testimony of G. A. Pehrson.)

A. Well, I more or less lost sight of him after he was off the ladder. I wasn't interested in his movements and I began to think of my own position. I intended to climb [82] up the ladder, but I am positive he was over the parapet when I started or before I started up.

Q. Did you watch him go up the ladder all the way? A. Yes, I did.

Q. And get on the ledge or the canopy and over the parapet?

A. Well, I am not positive that he was over the parapet wall, but I think he was.

Q. He was off the ladder before you started up?

A. Yes, he was off the ladder.

Q. And that was before you started up?

A. Yes, sir.

Q. You said on direct examination, Mr. Pehrson, that before you started up the ladder you moved it back?

A. Yes, I know that I moved it slightly, I don't know how much. I made an effort to move it, I felt it move away from the ledge to begin with while Mr. Hurst climbed up and I know that I made an effort to move it back. I don't know how much I moved it back.

Q. As Mr. Hurst climbed up the ladder, you had your left hand on it? A. Yes.

Q. And when he got off the ladder, you felt the ladder move? A. Yes.

Q. Which way? [83] A. To the left.

(Testimony of G. A. Pehrson.)

Q. About how far did the ladder move at the top would you say?

A. Well, now I don't know. I felt it move—in other words, I don't know just how much because I wasn't too much interested in measuring the distances right then, but thinking about it afterwards it appears that it should have moved about two inches where I had my hand.

Q. You say where you had your hand?

A. Yes, I would say about five or six feet from the bottom there.

Q. And that would mean it moved how far at the top of the ladder?

A. That would mean it moved about six inches, maybe four to six inches.

Q. Then your testimony now is that you did something about moving the ladder back?

A. I made an effort to move it back, but I don't know how far I moved it.

Q. You don't know how far you moved it?

A. No, I don't know.

Q. You don't know whether you got it solidly back on the ground, that is both standards?

A. No, I don't. I couldn't see the standards because there were pieces of board around there, short pieces of board.

Q. Loose boards? A. Yes. [84]

Q. And you didn't take the three or four seconds that would be necessary to pick them up and look at the standards?

A. We never do that about the building.

(Testimony of G. A. Pehrson.)

Q. But the question is, you didn't do it.

A. No, I didn't do it.

Q. So that when you started up that ladder, Mr. Pehrson, you don't know whether both legs of that ladder were resting on the ground?

A. I am not positive.

Q. You didn't know whether they were?

A. No, I didn't know, as I say, I didn't see them.

Q. Then what were you doing, were you just taking a chance that they might be on the ground and that you wouldn't have any trouble?

A. That is absolutely what we usually do.

Q. And was that what you did that day?

A. I probably did.

Q. Did you know on September 12th before you started up the ladder whether the top of the ladder was resting securely against the wall?

A. No, I didn't know that.

Q. You didn't know that? A. No.

Q. You figured that day as you had previously that you would take a chance that they would both be against the wall and that you would not have any trouble? [85]

A. I have done it many times before and I felt that I could do it again.

Q. And you did do it again?

A. I did do it again.

Q. Mr. Pehrson, without going to the trouble of moving the ladder back at all after you felt it move, after Mr. Hurst got off—first, do you recall giving

(Testimony of G. A. Pehrson.)

your deposition, I am not sure whether it was in Mr. Towles' office—I guess it was in Mr. Funkhouser's office, on the 6th of this month?

A. Yes, sir.

Q. At that time, Mr. Pehrson, didn't you tell me that you didn't then recall whether you tried to move the ladder back to its original position or not?

A. I don't recall what I said at that time.

Q. Mr. Pehrson, do you recall these questions asked and these answers given?

“Q. Then as Mr. Hurst got off the ladder and went over the parapet wall and out of sight, it was then that you started up the ladder?

“A. That is right.

“Q. And as you say, as he got off the ladder he apparently moved it to the left up at the top?

“A. I felt it did, yes.

“Q. Would you say that it moved about four inches at the top? [86]

“A. I would say that that is about what it would be.

“Q. And whether you moved the ladder back into position before you started up or not, you don't recall? A. I don't recall.”

A. I don't recall that we moved it back into position, I don't know what position it should be in—I know that I attempted to move it but I don't know the position that I moved it to. I can't tell you that.

Q. How old are you, Mr. Pehrson?

(Testimony of G. A. Pehrson.)

A. Sixty-eight.

Q. And this happened a little more than two years ago? A. Yes.

Q. So that your memory then was probably better than it is now?

A. That is right, I have gone through a lot since then.

Q. I realize that. When you were in the hospital and afterward while you were home, didn't you write up a statement in your own handwriting as to just what happened on September 12th, and how the accident occurred and as to what you did?

A. Yes, sir.

Q. And when you wrote that up your memory was a lot fresher on it than it is now?

A. My memory then—I was under the influence of a lot of [S7] dope and part of the time my memory wasn't so good then either.

Q. And after you did that didn't you take your handwriting notes down to your office and give those notes to your own stenographer and have her type them up? A. Yes, sir.

Q. And after she typed them up, you read over the typewritten sheets, did you not?

A. I don't think that I read them. She laid them on my desk, but I don't think that I read it.

Q. After she typed it up didn't you make some corrections?

A. Some corrections were made. I read a part of it but I don't think that I read it all.

(Testimony of G. A. Pehrson.)

Q. You made some corrections on a sheet of the statement?

A. I don't know about that.

Mr. MacGillivray: Attached to the discovery deposition in the original file with the clerk is the statement I have referred to and I would like to have it marked as an exhibit.

The Court: The deposition may be published.

Q. Mr. Pehrson, you have in your hand what is marked as Exhibit number thirteen. I will ask if that is not the original typewritten statement prepared by your stenographer in your office under date of April 12, 1953? A. Yes, sir. [88]

Q. And on each sheet of that exhibit there is in printing by your own hand, is there not, in pencil, filling in certain measurements and certain words that were left out by your stenographer?

A. That is right.

Q. And those corrections were made by you subsequent to April 12, 1953, when the document was typed?

A. That is right. It appears that I went through it all and there are corrections on each and every page.

Q. Then the information in that document prepared by yourself and typed by your secretary or stenographer should be correct, should it not?

A. I didn't get that.

Q. The information and the statements made in that document prepared by yourself and transcribed by your stenographer some six months after this

(Testimony of G. A. Pehrson.)

accident occurred, should be correct, should they not? A. I will have to say no to that.

Q. Why not?

A. That was written under—some of it was in the hospital and I was on my back and only about half right. I had merely made this out—I didn't have any intention of writing anything that was in every way a correct statement of fact, I will have to say that. I didn't know that it was ever to be used in a court room.

Q. When were you released from the [89] hospital? A. On the 8th of November, 1952.

Q. And then you started going back to the office on the 12th of February?

A. I was then on crutches and my wife took me into the car and I got to the office for a half hour a day.

Q. When did you start going down permanently to the office?

A. From then on I went every day.

Q. So that on April 12, 1953, when you read over this statement and made the corrections, you were not under opiates or out of your mind, or anything else, were you?

A. I wasn't very good—I will answer it this way that the corrections made were merely some measurements and names that I corrected. I didn't think about the actual facts that were stated in that statement. I wasn't interested in having any definitely correct statement at any time.

Q. And this statement that you term "Narrative

(Testimony of G. A. Pehrson.)

of Accident" was written voluntarily by yourself for your own use at that time?

A. Yes, sir, it was.

Q. Mr. Pehrson, I will ask you if you did not, in that statement, say this concerning the occurrence of this accident "I had made this trip about twelve or fourteen times during the construction of the roof over the building without mishap. At this particular trip Mr. Hurst went up ahead of me and I stood on the ground waiting for him to get off the ladder. I held my hand [90] on one of the rungs of the ladder." Now that is all correct, isn't it?

A. Yes.

Q. "As Mr. Hurst moved off the ladder to the ledge I could feel and notice that the ladder moved to the left." That is correct, isn't it?

A. That is correct.

Q. "From this brief notice it looked that from where my hand was about five feet from the ground, the ladder moved about two inches at that point. Therefore, a quick thought went through my mind that the ladder must have moved about four inches at the top." Now, that is correct up to that point, is it not?

A. That is correct, yes.

Q. "Immediately a flash of mind reminded me that I should move the ladder back." Now, that is correct, is it, Mr. Pehrson?

A. Yes, that is correct.

Q. "But as Mr. Hurst had already climbed from the ledge over the parapet and was out of sight and as I did not want to delay him, I started up without

(Testimony of G. A. Pehrson.)

moving the ladder back on its two legs." Now, is that correct?

A. Well, I tried to move it back, whether it was on its two legs or not, I don't know.

Q. You don't know? A. No, sir. [91]

Q. Then without knowing whether the ladder was firmly fixed on the ground at the bottom or firmly fixed against the wall at the top, you started up, hoping that nothing would happen?

A. Not hoping, I was used to those conditions.

Q. You knew that you were taking a chance?

A. I will have to answer that this way—you are evidently not a construction man. We take a lot of chances.

Q. And you did take a chance on September 12, 1952?

A. Yes, I did, and I am taking them every day.

Q. Mr. Pehrson, you say that the ladder was soundly and solidly fixed; do you complain that the ladder was too short?

A. No, the only thing that was said about the ladder—I was talking to Mr. Richardson once and we said——

Q. Mr. Pehrson, I want to know about the ladder. Just what you want the jury to feel that you thought was wrong with the ladder. What do you say was wrong with the ladder?

A. I believe that——

Q. We will go into that later. What do you say was wrong with the ladder?

(Testimony of G. A. Pehrson.)

A. There were two things wrong with the ladder.

Q. And what were they?

A. The ladder was too short.

Q. And what was the second thing? [92]

A. The second was that due to the fact that it was too short it had to be standing too straight up. Ordinarily a ladder should be off one-fourth of its height from the perpendicular, and this was about three feet from the building and it should have been about four feet, so that it wasn't leaning good enough against the building. This was necessary for if it had been moved out any farther it could not have been left there at all, it would have been in the window.

Q. So that the whole thing was that the ladder was too short?

A. It was too short.

Q. Having used that ladder at least ten times prior to the 12th of September, you knew how long it was, didn't you?

A. Yes, I knew how long it was.

Q. And you knew exactly how long it was and just where it reached on September 12, 1952?

A. I did.

Q. Did you feel each and every time that you used that ladder prior to September 12, 1952, that you were taking some hazard and risk in going up the ladder?

A. Not any more than the usual feeling of taking risks, we always take risks.

(Testimony of G. A. Pehrson.)

Q. I am not talking about the usual feeling—did you each and every time prior to September 12th when you climbed that ladder, feel that you were taking a risk in going up the ladder? [93]

A. No, I didn't even think about it.

Q. And how about on September 12th?

A. I didn't even think about it then.

Q. Mr. Pehrson, getting back to this deposition, do you recall that you told me about that at the time we took the deposition? A. Yes.

Q. What was it that you told me that you did recall at that time? To refresh your recollection, Mr. Pehrson, do you recall this question and answer?

“Q. Now, Mr. Pehrson, on September 12 when you started up the ladder did you feel in your own mind that in using that means of getting up to the roof you were subjecting yourself to some danger?

“A. Yes.”

Is that true, Mr. Pehrson?

A. I answered yes.

Q. But is that true today, is that right today?

A. Yes, that is true, it is right today.

Q. “Q. And having been around construction work the past fifty years and on these inspection trips almost daily I presume—— A. Yes.

“Q.—you knew what danger there was entailed in using that means of getting to the roof?

“A. Yes.”

That is correct, is it, Mr. Pehrson? [94]

(Testimony of G. A. Pehrson.)

A. Yes, that's correct.

Q. "Q. And you had had that same knowledge that there was some danger involved in using that means of getting to the roof each and every time that you had gone up that way? A. Yes."

Mr. Towles: I am going to object to this form of cross-examination. I think he should be allowed to determine from the deposition what is in there. He should be shown the deposition and I think the whole document should go into evidence.

The Court: No, I think just the parts that he wants to cross-examine about and I might say that any time the witness wants to look at his answer, he may do so.

Q. Those questions were asked, and you gave those answers? A. Yes.

Q. And they were correct on October 6th, and they are correct today, your answer is correct?

A. Yes, the answer is correct but it must be qualified.

Q. Go ahead with your explanation.

A. It must be qualified to this extent, the question was such that I had to say yes, I couldn't say anything else, there was no explanation. The question should have been qualified, but I had no opportunity to qualify my answer at that time. You were examining me as your [95] own examination and no other question was raised and my answer is correct.

Q. Mr. Pehrson, were not both Mr. Towles and Mr. Funkhouser present at that time and when I

(Testimony of G. A. Pehrson.)

finished with my examination didn't both Mr. Towles and Mr. Funkhouser question you?

A. They did not object to your question. You asked the question and it had to have a yes answer because that is right but there wasn't any objection to your question at that time and I did not have a chance to qualify.

Q. Getting back to the question, Mr. Pehrson, this was the question: "On September 12 when you started up the ladder did you feel in your own mind that in using that means of getting up to the roof you were subjecting yourself to some danger?" And your answer to that was "Yes." Now, do you want to explain that?

A. I want to explain that I said "Yes" and I should have said that those dangers we are always anticipating, we are never walking on a solid board and we are never walking on the floor, we are walking on anything that is provided for us on a construction project. You can talk to any construction man about that, but we have no expectation of having any solid place to put our feet. We have to do this; we have to take all of the precautions that we can and we have to watch and look and see where we are stepping. In the early days [96] when there were no restrictions sometimes we were two hundred feet in the air and walking on an "I" beam and had nothing between us and the basement excavation. We knew at those times and we always know that we are taking some chances.

(Testimony of G. A. Pehrson.)

Q. What precautions could you have taken before you started up that ladder?

A. I could have refused to go up the ladder.

Q. What else could you have done?

A. I don't know any other precaution.

Q. You could have taken the precaution of seeing that both standards of the ladders were solidly on the ground?

A. It may be that they stood on the ground.

Q. But you didn't take the precaution of seeing that they were?

A. As I say, those were the chances that we have to take.

Q. That is one precaution that you could have taken, isn't it, Mr. Pehrson, that is, to lift a couple of boards and see definitely that both standards were set on level ground; you could have done that?

A. But no one would have asked me to do.

Q. But you could have done that?

A. I could have, yes.

Q. And did you do that before you started to go up the ladder? [97]

A. I didn't do it.

Q. You could have checked the top of the ladder and determined definitely if both the standards were set securely against the wall of the building?

A. Yes.

Q. Did you do that?

A. No; I didn't.

Q. You started back to work on February 12. Did you spend a full day at the office from that time on or did you work your way into full time?

A. I started about a half hour a day and I kept

(Testimony of G. A. Pehrson.)

adding a little to it and in about a month I was back pretty much a full day.

Q. About some time in March then, you started a full day there? A. Yes.

Q. You have been engaged in your profession as an architect again since some time in March?

A. Yes.

Q. What jobs do you have at the present time?

A. We are finishing the Bonners Ferry Hospital and we are finishing up one high school at Mountain Home, Idaho.

Q. Is that constructed by Buscombe and Rau?

A. No; that was by the Western Construction Company. The hospital at Bonners Ferry is constructed by Buscombe and Rau. [98]

Q. And what about the Newberry job in Yakima?

A. The Newberry job in Yakima, we have that completed now.

Q. When was that completed?

A. That was completed about five weeks ago.

Q. What other jobs have you completed this year?

A. We have completed the high school at Mackay, Idaho, and we had a little to do to complete the high school at Sandpoint, and that is about all.

Q. When did you start going back on these inspection trips?

A. The first inspection trip to Boise and Mountain Home—no, the first trip up here I cannot re-

(Testimony of G. A. Pehrson.)

call, but I think it was about the middle of February.

Q. Of what year? A. 1953.

Q. And you have been making these inspection trips then at least since March of 1953?

A. Yes.

Q. On these various projects under construction? A. Yes, sir.

Q. That would be to Yakima, Bonners Ferry, Mackay and Priest River?

A. No; the Priest River job is finished. I have been at Mountain Home and Mackay.

Q. And possibly Yakima?

A. Yes; possibly to Yakima.

Q. And to Bonners Ferry? [99]

A. Yes, and to Bonners Ferry. I go there now every Monday.

Q. You made a statement, Mr. Pehrson, about a pile of debris on the ground in the vicinity of the ladder? A. Yes.

Q. That was just loose rubbish of the usual type that you find around construction jobs that had been gathered in one pile for disposal?

A. Yes; that is right.

Q. Did you fall on that pile?

A. I fell on that.

Q. Do you recall, where did you fall, was it to the left of the canopy, or in front, or where?

A. When I came to, I was just about in the middle of the ladder out there. I think I was under the ladder.

(Testimony of G. A. Pehrson.)

Q. The ladder was still standing?

A. Yes; it was still standing.

Q. You fell directly back of the ladder?

A. I must have slid over or my balance must have thrown me over because I remember distinctly I was under the ladder when I came to.

Q. Under the ladder?

A. In the space between the wall and the ladder, do you understand?

Q. Yes. Now, Mr. Pehrson, to sum it up briefly, the cause of losing your balance was one of two things, perhaps; one, that when Mr. Hurst moved the ladder when he got off, it [100] had not been resting then squarely against the building at the top or had not stood solidly at the bottom?

A. That is correct.

Q. And neither one of those things did you check?

A. Neither can I tell about accurately.

Mr. MacGillivray: I ask admission of Exhibit Number thirteen at this time, if the Court please.

The Court: It may be admitted.

Mr. MacGillivray: That is all.

Redirect Examination

By Mr. Towles:

Q. Handing you defendant's Exhibit Thirteen, will you state to whom you loaned that statement?

Mr. MacGillivray: That is objected to as immaterial.

(Testimony of G. A. Pehrson.)

The Court: The objection is sustained.

Q. When did you see that statement after you loaned it in April, 1953?

Mr. MacGillivray: That is objected to as immaterial.

The Court: I cannot see where it is material, the objection is sustained.

Mr. Towles: That is all. [101]

Mr. MacGillivray: Nothing further.

The Court: We will recess at this time for ten minutes.

October 21, 1954—2:35 P.M.

DR. FRANCIS BRINCK

called as a witness by the plaintiff, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. Towles:

Q. Will you state your name?

A. Francis Brinck.

Q. Where do you reside, Doctor?

A. Spokane, Washington.

Q. And where do you have an office?

A. In the Paulsen Medical and Dental Building.

Q. And are you associated with anyone?

A. I am a partner of Dr. Alfred O. Adams.

The Court: Do you admit the qualifications of Dr. Brinck?

Mr. MacGillivray: Yes, indeed we do.

(Testimony of Dr. Francis Brinck.)

Mr. Towles: I would like to go into the doctor's qualifications some.

The Court: Very well, if you don't want to accept the admission of his qualifications [102] you may go ahead.

Q. You are associated with Doctor Adams?

A. Yes.

Q. Will you state your education for us?

A. I was graduated from the University of Alberta in 1940, I did internship at the University of Alberta and the Misocordia Hospital in 1939 and 1940; I interned at the St. Lukes Hospital in Spokane in 1940 and 1941. Following that I went in with Dr. Adams until I was called to the Army. I knew I had some time to do and there was no use making any plans before, so I spent four years in the Army.

Q. Where were you?

A. Principally in the Burmese theater. I was chief orthopedic surgeon in a fifteen-hundred-bed hospital. On discharge from the Army I was resident surgeon at the Shriners Hospital in Spokane. Following the completion of my formal training I went in partners with Doctor Adams. I am certified by the American Board of Orthopedic Surgery—a member of the American Academy of Orthopedic Surgery, a member of the Western Orthopedic Society, North Pacific Orthopedic Society, and the Spokane Surgical Society.

Q. Was Dr. Adams at the Shriners Hospital, too, at the time you were there?

(Testimony of Dr. Francis Brinck.)

A. He was chief surgeon. [103]

Q. When did you first meet Mr. Pehrson, Doctor?

A. That was at the Sacred Heart Hospital in September of 1952.

Q. About September 12th, was it? A. Yes.

Q. Under what circumstances and what time of day was it that he arrived?

A. It was in the evening. I had been called and told that Mr. Pehrson was being brought by ambulance to the Sacred Heart Hospital and that he was having quite a bit of trouble, so I went up and waited until he got there.

Q. When he arrived, what did you do?

A. I had a look at him, made an examination as much as I could at that time to see what the treatment would be.

Q. Did he have some X-rays that came to the hospital at that time?

A. The ambulance brought some X-rays along with them in X-ray frames.

Q. And did you examine the X-rays?

A. Yes; I examined the X-rays.

Q. What did you tell him about what he had to do?

A. On looking at the X-rays that came down with him I was very upset about the whole thing because he had a very bad fracture of the hip. We like to pin these or nail them, whatever term you want to use, because then we [104] can get them off their backs and get them up. On looking at his

(Testimony of Dr. Francis Brinck.)

X-rays everything was so badly shattered that I could not see where I was going to put in a pin and I told Mrs. Pehrson—I think she was with him at that time—I told them at that time that we would like to operate and have an internal fixation metal to hold everything until it healed and I could not see where a metal pin would hold because everything was fragmented so badly. We put adhesive tape on his leg and a weight on his leg over a pulley to relieve some of the pain and we gave him sedation and I left what orders I thought necessary.

Q. Did you see him again the next morning?

A. Yes, sir.

Q. And what did you do at that time for him?

A. The next morning I drilled a wire through the lower end of the femur and another wire through the lower end of the tibia so that I could suspend the leg up in the air and pull it out into place.

Q. The femur is what?

A. That is the big bone in the leg.

Q. Is that the thigh bone? A. Yes.

Q. And what is the tibia?

A. You might call it the big leg bone.

Q. And that was on the right? [105]

A. The right side, yes, sir.

Q. You say that you wired him up some way?

A. I put these wires through, one through here and one through here (indicating) and then I attached wires to ropes and weights and lifted the leg up in the air.

(Testimony of Dr. Francis Brinck.)

Q. What kind of weights are those?

A. They are just round weights, roughly about sixteen, I think, between twelve and sixteen, I believe that sixteen is the maximum.

Q. And then he had to lie on his back in that condition? A. Yes; he was flat in bed.

Q. That was a temporary condition, was it?

A. Well, actually, it turned out to be temporary but I thought it was going to be permanent. I put these wires in and pulled him down and then I X-rayed it again and on the new X-ray I saw where I could get a nail in and a side-plate and fix the fragments together so that he could get off his back.

Q. After you did that, what did you tell him that he would have to do or that he should do in the way of an operation, what did you suggest after you found out that you could do something?

A. I suggested that he have surgery?

Q. And how long was that delayed?

A. Well, I can soon tell you—he came in on the 12th and I put the Kirschner wires in on the 13th and then on the [106] 14th I took my new X-rays—no, on the 14th I ordered the X-rays and on the 15th I decided that he could be operated on.

Q. And what did you advise him if he was operated?

A. I advised him that he would have to lie on his back with these wires and weights and everything until it healed.

Q. Did you tell him anything about the mortality rate in those cases where they were not operated?

(Testimony of Dr. Francis Brinck.)

Mr. MacGillivray: Now, we object to that as immaterial.

The Court: I don't want to hurry counsel at all in the trial of this case, but I believe it would be probably satisfactory to counsel for the plaintiff if you will just let the doctor go ahead and give a full history of this matter. You can save a great many questions because the doctor knows what he did; he knows all about the condition at the time and all about the suffering, and if he will just go ahead and give you a full history of everything that he did and if anything is overlooked, then you can enlarge on it by questions. I am not attempting to tell you how to do this; you just go ahead and do it your own way; that was just a suggestion.

Q. Doctor Brinck, will you just state everything that occurred, in your own words, just tell the jury about it? [107]

A. I guess it was on the 15th that I decided that he could be a candidate for surgery. With surgery they get along a lot better but Mr. Pehrson kind of wanted Doctor Adams to look at him; he wanted Doctor Adams to look at him before he went ahead; maybe he was a little bit doubtful about it or something, and then he decided to go ahead and Doctor Adams came in on the morning of the 19th, and on the morning of the 19th Dr. Adams and myself and Doctor Weholdt operated. The operation consisted of what they call a Smith-Peterson operation of the thigh, that is, the hip bone is exposed indirectly—that is, it is all done under X-ray, you

(Testimony of Dr. Francis Brinck.)

can't see most of the time what you are doing; you work for awhile and then you X-ray. A nail about four inches long is driven up into the head of the hip bone just below the socket and to that is attached a side-plate with a screw and then screws are put through the side-plate and then a wire was put through another fragment to hold it together. At the same time this was done another operation was carried out on his collarbone in which an incision was made over the fracture and the fracture brought back and held together with stainless steel wire in the form of a figure eight loop. Mr. Pehrson was returned to bed following surgery and left in traction and the traction was removed about the 4th of October, 1952, allowing him to sit up; we don't like to see these people who [108] are hurt so badly stay on their back too long, or they may get pneumonia and die on you.

Q. Handing you this Exhibit Fourteen, I will ask you what that represents?

A. Well, this is actually a wax model of a hip bone with a nail, we call it a nail, which is this, you can only see the end of it here, it goes from here right up to this end (indicating); here you see the side-plate and here is the screw connecting onto the side-plate; this holds the side-plate onto the nail right here (indicating) and the screws hold this on here (indicating). This is not a replica of Mr. Pehrson's hip, this is a wax model and was made many years ago for a medical demonstration that I put on and I gave it to Mr. Pehrson for a souvenir

(Testimony of Dr. Francis Brinck.)

to use as a paper weight. This red line (indicating) does not represent the fracture that Mr. Pehrson had. He had a fracture about like this (indicating) and another fracture down here as well, and that is drawn in blue. I drew those in there for him one day while he was in the hospital. Mr. Pehrson's side-plate is a five-hole side-plate, and this is a three-hole plate; his is about this long (indicating). In addition, he had a piece of wire because this big knob that you see here was broken off and a wire was placed around this and back into the main bone to hold it together. [109]

Q. Do you have an X-ray with you that shows this bone after you operated?

A. The one I have here was taken some time afterward; it was taken on the 2nd of July, 1953.

Q. Handing you Plaintiff's Exhibit Number Fifteen, will you just state what that is and when the picture was taken?

A. This is an anterior-posterior X-ray of the hip, taken on the 2nd of July, 1953. Anterior-posterior means that it is an X-ray taken from front to back, just like you are looking at a person and it shows the nail, the screws and the side-plate and the wire in place with the fractures healing.

The Court: Have you any objections to this being admitted?

Mr. MacGillivray: No; none at all.

The Court: It may be admitted.

Q. Doctor, do you have a sample of some of those wires put into him?

(Testimony of Dr. Francis Brinck.)

A. Yes; I have a sample here.

Q. Will you tell just what you did with those wires? We will have them marked for identification.

A. This is what they call a Kirschner wire, and this was put through the lower end of the tibia, this way, and [110] right through here. This is a sample of stainless steel wire and it is the wire that was used in the collarbone and in the hip.

Mr. Towles: I would like to have these marked.

The Court: Do you have any objections to these exhibits being admitted?

Mr. MacGillivray: No; no objection.

The Court: They may be admitted. Those are Exhibits Number Fifteen and Sixteen. It seems there was a mix-up on the other exhibit, I thought it was Number Fifteen.

The Clerk: These are numbered fifteen and sixteen—no, your Honor, these are sixteen and seventeen; fifteen was the X-ray. Sixteen is the straight wire; seventeen is the roll.

Q. Similar wires were put into his shoulder blade or collarbone? A. Yes, sir.

Q. And it is still in there? A. Yes, sir.

Q. Can you feel that when you put your hand on his collarbone?

A. You can feel something there, whether it is the end of the wire or not, I don't know. [111]

Q. It has never been taken out? A. No.

Q. And did Doctor Adams do that part of the operation?

(Testimony of Dr. Francis Brinek.)

A. I think he did; I think I did the hip and he did the shoulder.

Q. Can you feel this plate and bolt and things inside the hipbone, can you feel those?

A. You can feel the plate and the nut that goes on the end, the nail, the Smith-Peterson nail is buried and all you can see of that is the very end, a little of the end.

Q. Is this operation something that has come in in recent years?

A. About 1936 or 1937, I believe.

Q. And what do you call it?

A. A Smith-Peterson nailing operation.

Q. How successful has it been, Doctor?

A. Well, it served its purpose; it gets them active again; otherwise, these people would have to be flat on their backs until they all healed and many people will not tolerate that.

Q. Finally Mr. Pehrson got on his feet, did he, or did he sit up in a chair?

A. We get them in a wheelchair or a chair and then we get them in a walker which is a frame with casters on it to [112] give them support, and finally we give them crutches and then a cane.

Q. Can you tell when a patient is suffering pain?

A. I think in some cases you can.

Q. Can you tell in Mr. Pehrson's case?

A. Yes; I could.

Q. Did he suffer? A. He did have pain.

Q. Was it severe, or could you tell?

A. Yes; he had severe pain.

(Testimony of Dr. Francis Brinck.)

Q. How long has he been under the care of you and Doctor Adams?

A. The last time I saw him for his hip was the 2nd of October, 1953, and then I saw him again later on but it does not state here the date and I saw him this summer.

Q. Did you examine him just the other day or last night, or some time recently?

A. I examined him last night.

Q. What was the result of your examination last night?

A. I examined the left shoulder and the right lower extremity. The left shoulder shows a scar three and a half inches over the collarbone; under the scar was a sharp mass or projection. I examined his shoulder for motion and I found the motion in the shoulder was good.

Q. Does he have any pain in that shoulder on motion? [113]

A. I cannot tell.

Q. Is it affected by the weather?

A. He tells me that it is and early in the morning, the first thing in the morning, he has to kind of get it going. I measured the arm below and above the elbow to see if there was any wasting away of the muscle and I found there was not. Then I examined the leg, I found there was a scar over the right hip seven inches in length. The right leg is one inch shorter by actual measurement and by apparent measurement it is two inches shorter—truly, this is a very technical point but by actual measurement, as an engineer would measure it, it is one inch

(Testimony of Dr. Francis Brinck.)

short, and as he uses it, it is two inches short. That is kind of hard to explain and I will admit that it took me a number of years to understand it. I found that he had a one-inch wasting of the right thigh which shows that he is not using it as much as the left and, therefore, the muscles would waste. The right calf was slightly smaller than the left calf but not enough to accurately give the distance, but there is a slight amount of difference. The next thing I did was to examine the range of motion in the knees and the ankles, which were approximately the same, and then I examined the range of motion of the hips to compare the right hip to the left hip to see if the one that had been broken had as good a motion as the one that had not been broken. The hip that had [114] been broken is held slightly in toward the body, that is, a little bit upwardly rotated when he lies naturally, it points out a little bit. The figures that I came up with was that abduction, which is this motion—that he has a limitation of motion of abduction of ten degrees; he had thirty degrees of motion of this on the left and only twenty degrees on the right. Adduction, which is this one, was the same, that is, the bringing of the legs in, and in rolling the legs in and out it is found that on the right side he can roll out five degrees while on the left side he can roll out about ten degrees. Let me make a correction on that, I should say, that is rolling it in. On the good leg, rolling it out, he could roll it out about thirty degrees, that is on the left, and on the right he could roll it about twenty.

(Testimony of Dr. Francis Brinck.)

So that he had some limitation of motion in rolling it in and rolling it out. He has some limitation in pulling it out this way but there is none in this motion (indicating).

Q. How does this affect his ability to walk, and to do the work that he has been doing as an architect?

A. As far as ability to walk is concerned, he has pain in it, it is short and there is a limitation of motion and he does have pain.

Q. Is he able to climb around the construction of buildings at the present time, or will he be in the future?

A. No; not to any great extent, he might be able to climb [115] up one ladder, but he cannot be running up and down ladders; he has a very painful hip.

Q. Will that continue in the future, Doctor?

A. That is permanent.

Q. Your opinion is that these injuries are permanent? A. Yes.

Q. And will last as long as he lives?

A. Yes.

Mr. Towles: You may take the witness.

Cross-Examination

By Mr. MacGillivray:

Q. Doctor Brinck, you first put in these Kirschner wires above the knee and above the ankle, is that right? A. Yes, sir.

(Testimony of Dr. Francis Brinck.)

Q. The purpose of those was to assist in traction? A. Yes.

Q. Sometimes you treat these broken bones by traction and other times by open operation?

A. Yes, sir.

Q. The reason you do the open operation is that when you do use traction you pull the bone back into normal position as best you can and leave it in that position until normal healing takes place?

A. Yes.

Q. And that takes some period of time? [116]

A. That takes three or four months, and they are flat on their back during that time.

Q. And the benefit of the open reduction of a fracture, that operation is to nail the fracture together or the fractured part together, instead of waiting to heal by the use of traction and the patient gets the use of it quicker, is that right, Doctor?

A. All of this hardware here doesn't make it heal any faster; all it does is hold it together, the parts together while it does heal. There is no strength to this material; it looks nice and strong, and everything like that, but it has no strength, that is why we are so careful because any false move of any kind—a slip or a sudden jerk will tear all that stuff out and it is just to hold it in place while it does heal.

Q. If you don't use the open reduction, then the patient is bedridden for some time? A. Yes.

Q. If you do use open reduction they can get

(Testimony of Dr. Francis Brinck.)

up in a wheelchair or get around, otherwise they don't?

A. Yes; that is right; that is the purpose of it.

Q. And that is a commonly accepted operation today? A. It is.

Q. And you orthopedics do a number of them?

A. Yes.

Q. You do a number of those yourself? [117]

A. Yes.

Q. And Doctor Adams took care of the shoulder?

A. Yes; we both worked together, but I am certain that he did the shoulder and I did the hip and then afterwards we both took care of him.

Q. As I understand, at the present time, the motion in the shoulder is good, there is no atrophy of the muscle or the arm or anything?

A. That is right.

Q. In other words, Doctor Adams got a very good result insofar as the shoulder is concerned?

A. Excellent.

Q. And insofar as the right leg and right hip is concerned he has some limitation of motion on the right side as compared to the left? A. Yes.

Q. There is some limitation in abduction movement and in rotation? A. Yes.

Q. And the right leg is one inch shorter than the left? A. That is correct.

Q. And I presume that shortness is what causes the limp?

A. That is one of the factors, probably the biggest factor.

(Testimony of Dr. Francis Brinck.)

Q. Do you ever build the shoe up in a case like that, or has it been tried?

A. I don't think it would help—the body will tolerate one inch. [118]

Q. What was that, Doctor?

A. I say the body will tolerate one inch.

Q. He does have some discomfort if he walks for any distance?

A. I know he does. I have seen him on the street and he has quite a difficult time in getting around.

Q. He does do quite a bit of walking around on the streets in Spokane?

A. Well, I see him on the streets sometimes, yes.

Q. Insofar as his work is concerned, you would not advise his climbing ladders all of the time?

A. I don't know how to answer that. I cannot advise him because I think it would be too painful.

Q. Insofar as the extent of the fracture is concerned, I take it that this Smith-Peterson operation that you did, you had a good result insofar as that is concerned?

A. Yes; it is short and it was slow in healing, but inasmuch as it was so badly comminuted I would say that it is a fine result. Twenty-five per cent of them don't heal at all.

Q. They don't heal at all?

A. They never heal. He went on to a union and I would say that it is a very fair result.

Q. Would you say that the hip is surgically healed now?

A. The fracture is surgically healed; yes, sir.

(Testimony of Dr. Francis Brinck.)

Q. That is both insofar as the shoulder and the hip is concerned? [119] A. Yes, sir.

Mr. MacGillivray: That's all.

Redirect Examination

By Mr. Towles:

Q. Is there anything further that you could do for this patient that you know of, Doctor?

A. Well, I wanted to go in and cut the muscles in the hip with the idea that it would maybe increase range of motion, but after consulting with my partner he didn't think that the amount of benefit derived from the surgery would be worth while, and, so, therefore, I didn't pursue the subject any further, otherwise, as far as treatment goes, I don't know of anything else to do.

Q. Would it be necessary, or would you advise the removal of this plate and these screws from this bone?

A. The only time that those are removed is when the patient complains that he can feel them, sometimes they will tell you that at night when they lie on that side, it is like lying on a rock. After all, part of this hardware is between the bone and the skin and particularly in thin people they will complain about it, otherwise they are not removed ordinarily.

Q. Would you advise removing them in this case? A. Not in this case.

Q. When you speak of an open reduction, what do you mean by that? [120]

(Testimony of Dr. Francis Brinck.)

A. An open reduction is when you cut down to the fracture and put them together with tools.

Q. In cutting down to the fracture you have to go right through the flesh, the muscles, the nerves, and everything, don't you? A. Yes.

Q. And you lay all of them to one side, and then start in to scraping the bone, do you?

A. No; you don't scrape the bone; you try to line everything up the way that it should be and put it together with metal.

Mr. Towles: That is all.

Recross-Examination

By Mr. MacGillivray:

Q. By the way, Doctor, these Kirschner wires were taken out after you decided on the surgery?

A. No; they were taken out in October and the surgery was in September.

Q. But they were taken out.

Mr. MacGillivray: That's all.

Mr. Towles: That is all.

The Court: Doctor, I assume that you may be excused so that you can get back to your own work.

KATHRYN M. SHEEHAN

called as a witness by the Plaintiff, after [121] being first duly sworn, testifies as follows:

Direct Examination

By Mr. James G. Towles:

Q. Mrs. Sheehan, will you state your age and your occupation?

A. I am a private duty nurse and I am thirty-seven.

Q. And what has been your experience in the nursing field, how long have you been in that field?

Mr. MacGillivray: I will admit her qualifications as a registered nurse.

The Court: Her qualifications as a registered nurse and her ability and all of that are admitted.

Q. How long have you been a nurse?

A. I went into training twenty years ago.

Q. And you have been in that continuously?

A. Yes, sir.

Q. Are you acquainted with the plaintiff in this case, Mr. Pehrson? A. Yes, sir.

Q. And will you relate what your relationship has been to Mr. Pehrson?

A. I was called by the Nurses' Professional Registry to care for Mr. Pehrson on September 19th and I went over on the morning of the 20th of September.

Q. Was that immediately after the [122] operation? A. Yes, it was.

Q. In your experience as a nurse you have fre-

(Testimony of Kathryn M. Sheehan.)

quently taken care of people that had serious injuries or were seriously ill?

A. Yes, sir; many of them.

Q. Have you had occasion to observe people under conditions of suffering?

A. Yes, sir; many times.

Q. Will you state your experience whether Mr. Pehrson was suffering in the hospital?

A. He had a great deal of discomfort.

Q. Will you explain that?

A. Well, I went to be with him the day after surgery and he was having a great deal of pain due to the position that he was in; he was flat on his back and was helpless and he had pain in the operative procedure.

Q. How long did that painful condition continue?

A. Well, he was uncomfortable all of the time that he was in the hospital, but he did receive opiates for the first week.

Q. That was the first week that you attended him? A. Yes, sir.

Q. And after the first week, was it possible that he could sleep without opiates?

A. Well, he tried very hard; he was a good patient. [123]

Q. Did he complain about pain?

A. He had a great deal of pain.

Q. Did he complain about it to you?

A. Yes; I knew that he was having pain.

(Testimony of Kathryn M. Sheehan.)

Q. Will you state how long this pain continued while you took care of him?

A. He had a great deal of pain at first, and as time went on it was while he was moving, getting up and one thing and another. The pain was continuous, however, all of the time that I took care of him.

Q. Did you take care of him until he left the hospital? A. Yes, sir; I did.

Q. Do you know when he left the hospital?

A. I was with him until the 8th of November.

Q. And after that time you had no contact with him?

A. I had no contact with Mr. Pehrson after that.

Mr. Towles: I think that's all.

Cross-Examination

By Mr. MacGillivray:

Q. Mr. Pehrson was a pretty good patient?

A. He was very good.

Mr. MacGillivray: That's all.

Mr. Towles: That's all.

MRS. BESS PEHRSON

called as a witness by the plaintiff, after being [124]
first duly sworn, testifies as follows:

Direct Examination

By Mr. Funkhouser:

Q. Will you please state your name?

A. Bess Pehrson.

(Testimony of Mrs. Bess Pherson.)

Q. Are you the wife of G. A. Pehrson, the plaintiff here? A. Yes, I am.

Q. You live in Spokane? A. Yes, sir.

Q. How long have you been married?

A. Thirty-eight years.

Q. Any children?

A. One daughter, and we have two grandchildren.

Q. Prior to this accident in 1952, Mr. Pehrson was what we would call at least an average man in good health? A. Yes, he was.

Q. Did he enjoy out-of-door life, hunting and fishing?

A. Yes; he always went hunting and fishing.

Q. And he got considerable enjoyment in the great out-of-doors? A. Oh, yes; he did.

Q. You were with him how much of the time in the hospital?

A. As much as I could be there. I was there in the morning and then I left to go home and then I went back when Mrs. Sheehan would leave and I would take over again, I stayed there until 10:00 o'clock at night. [125]

Q. You heard the nurse speak of his suffering—when he went home, who had charge of him?

A. I did.

Q. And he went home, did his suffering continue?

A. Yes, sir; it did; I took care of him and I know about that. I had to lift him in and out of the walker every day and that wasn't very easy. I gave

(Testimony of Mrs. Bess Pherson.)

him his bath and I helped him as much as I could.

Q. You heard the doctor say that a bolt and this piece of metal is still in his hip?

A. Yes; I did.

Q. And it can be felt, can it?

A. I don't know; I never felt it, but I guess so.

Q. I mean, it is obvious?

A. I suppose he can feel it; he says that it hurts.

Q. Can you tell us about the suffering that he endured when he went home?

A. He suffered a great deal. He wouldn't take any opiate and I couldn't give him anything but I tried to make him as comfortable as I could in bed and I helped to turn him around.

Q. Does it still bother him?

A. Yes, it does; especially on rainy days it aches; he says that it does and I can tell because he is so lame.

Mr. Funkhouser: That is all. [126]

Cross-Examination

By Mr. MacGillivray:

Q. Mrs. Pehrson, in the months before Mr. Pehrson had this accident, did you go with him on the inspection trips?

A. Yes; I used to go with him all the time and help drive the car.

Q. Did you, particularly in the month before this accident happened, drive him around?

A. Before it happened?

(Testimony of Mrs. Bess Pherson.)

Q. Yes; that is, between the 12th of August and the 12th of September?

A. Not just that month; I always went with him on his trips.

Q. Wasn't he in the hospital about the 12th of August with a serious infection?

A. He had the flu, I guess, for a couple of days.

Q. He was in the hospital for about four days?

A. Three, I think.

Q. Other than that, he had been in good health?

A. Yes, he had; he has always been healthy.

Q. Does he drive a car back and forth to the office?

A. I do most of the driving now.

Q. Doesn't he drive the car quite a bit?

A. Not very much. I drive him to the office and go and get him at night.

Q. Is that just since the accident?

A. Yes. [127]

Q. Didn't he drive the car up here yesterday?

A. Yes; he can drive but I try to help him all that I can.

Mr. MacGillivray: That is all, I believe.

Mr. Towles: The Plaintiff rests, your Honor.

The Court: Ladies and Gentlemen of the Jury, you may be excused until 10:00 o'clock tomorrow morning and you may retire at this time.

Mr. MacGillivray: If the Court please, I would suggest that before Mr. Towles announces that he rests, that there are a couple of exhibits, one that has not been admitted, and one that I think was

admitted with reservation or that the Court took the ruling under advisement.

The Court: I will take judicial notice of this book, and I will not admit it in evidence. I will take judicial notice to it as a part of the law of this state and I will give it to Counsel so that they can point out to me any part of it that they think is material to this case. You may take the book with you tonight and make me a little memorandum of the sections of the book that you think are material in this case.

Mr. Towles: I think it is all contained in one of the instructions that I have [128] handed to your Honor.

The Court: Very well, if it is all in that instruction, that is the part of it that you claim is material, if that is right I will take that as your memorandum of what you deem material. The objection to the offer of Exhibit Number Three will be sustained; the other I am sure was admitted. This model of a bone, that has not been **admitted**.

Mr. Funkhouser: We would like to have that admitted.

The Court: That was Number Fourteen, and that may be admitted at this time.

Mr. Towles: Now, then, I think Exhibit Number Seven, which was some wire——

The Court: There was no objection to that; it may be admitted.

Mr. Towles: Plaintiff's Exhibit Fourteen, which is the bone——

The Court: I thought that was the one I just spoke of.

Mr. MacGillivray: That is right, but we do have an objection to that. The Doctor has testified that it was not a replica of Mr. Pehrson's hip.

The Court: That is right; if there is an objection, that objection will be sustained because I recall now that the doctor did testify that it [129] wasn't a likeness of the bone involved here.

The Court: There were some exhibits that were admitted subject to your motion to strike.

Judge Hawkins: We have no objection to those exhibits.

The Court: Very well, then they may be admitted if there is any doubt about their admission. The checks and the hospital bills have also been admitted. Are those the ones you had in mind, Judge Hawkins?

Judge Hawkins: That is right.

The Court: This Exhibit Number Nine, which was a contract, I ruled on that and it was not admitted, because it is admitted by the defendant that there was a contract and that Mr. Pehrson was rightfully there. I think that takes care of everything up to this point.

Mr. MacGillivray: Comes now the defendant at the close of the plaintiff's case, the plaintiff having rested, and challenges the sufficiency of the plaintiff's evidence to sustain any verdict against the defendant and moves the court for a voluntary nonsuit and requests the court to instruct the jury to

bring in [130] a verdict in favor of the defendant.
That is my motion.

(Remarks by counsel not reported.)

The Court: I will take this under advisement and rule on the motion tomorrow at 10:00 o'clock. At this time we will recess until 10:00 o'clock tomorrow morning.

October 22, 1954—10:00 A.M.

The Court: I think perhaps it might be a waste of time to proceed further in this case, but I don't want to give a hasty decision on the matter, and as the rules provide that I can take this up again at the close of the evidence, I will overrule your motion at this time.

Mr. Towles: I would request that the plaintiff be permitted to reopen its case for the purpose of having a witness, Mr. Donald Hurst, who was mentioned by Mr. Pehrson in his testimony. I would ask that he be permitted to testify here. Mr. Hurst has just returned from Arizona and I phoned him at Cocolalla and he said that he would come down to court this morning and I would now ask that we be permitted to reopen and call Mr. Hurst.

The Court: I will not [131] reopen the case at this time. Mr. Bailiff, you may call the jury.

(The following in the presence of the jury.)

(Opening statement by Mr. MacGillivray.)

RICHARD VAN SLIKE

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. MacGillivray:

Q. What is your full name?

A. Richard VanSlike.

Q. Where do you reside? A. Spokane.

Q. And you are employed by whom?

A. The DeLong Plumbing Company.

Q. Is that a plumbing contracting concern in Spokane? A. Yes, sir.

Q. How long have you worked for them?

A. Since 1945.

Q. What type of work did you do?

A. Plumbing of all sorts.

Q. Did you have any connection with the construction of the grade school at Cocolalla, Idaho, during the year 1952?

A. We had the plumbing and heating.

Q. By that, do I understand that the DeLong Plumbing Company sub-contracted under the C. B. Lauch Construction [132] to do the heating and plumbing? A. Yes.

Q. You were not employed by the Lauch Construction Company? A. No, sir.

Q. You were working for the DeLong Plumbing Company? A. Yes, sir.

Q. Were you in charge of that work for the DeLong Plumbing Company? A. Yes.

(Testimony of Richard VanSlike.)

Q. What did your work consist of during the course of the construction of that school building?

A. Well, all of the plumbing from the ground-work up through the finish.

Q. Did the work entail any work on the roof of the building itself? A. Yes.

Q. What type of work was done on the roof by you?

A. We had a roof drain, two of them, and we also had all of the vents for the plumbing fixtures.

Q. Were you familiar, during the course of the construction, prior to September 12, 1952, with a ladder as a means of access to the roof at the front of the building? A. Yes, sir.

Q. Had you used that ladder?

A. Yes, sir; many times.

Q. For what purpose? [133]

A. Getting to the roof.

Q. Had you carried material up that ladder?

A. Yes, sir; sometimes quite heavy materials.

Q. Now, will you please speak up and just tell the jury what kind of material you would carry up that ladder and how you would get the material up there on the roof?

A. I have carried different types of wrenches and different sizes and different sized pipes to the roof for the running of the vent through and I have rain leaders from the gym, the highest portion of the roof, to feed in through the top and to get the material up there I would carry it on my shoulder and some of the heavier I would lay out on the

(Testimony of Richard VanSlike.)

awning up there and then get up on the awning and put it over on the roof.

Q. After you got the material on the awning, how would you get your body from the ladder to the canopy itself?

A. I would just walk up the ladder, step over on the canopy and throw my leg over the wall.

Q. Did the ladder extend up above the canopy?

A. Well, I would say that it hit about half way up the parapet wall.

Q. How far above the top of the canopy did the top of the ladder extend?

A. I would say, roughly, eighteen inches.

Q. Did you have any difficulty with that ladder in getting [134] off the ladder on the ledge on the canopy and over on the roof of the building?

A. No; I had no difficulty.

Q. Was that ladder solidly constructed?

A. Yes, sir.

Q. And was that ladder—strike that, please—before using that ladder and starting up, whether you were carrying material or not, what precaution did you take to see that the ladder was safe?

A. Well, I always put my foot on the bottom rung and pulled the ladder to see if it was sitting solid and then I would go on up.

Q. To see if it was setting solidly at the bottom?

A. Well, sometimes it had been setting there for a week.

Q. Before using it, you would do that to see if it were solid at the bottom?

A. Yes.

(Testimony of Richard VanSlike.)

Q. And you would see if it was fixed solidly to the wall at the top, or, rather, against the wall?

A. Yes, sir.

Q. Is that a custom that you follow in all construction work? A. Yes, sir.

Q. Were you present on the construction site the date that Mr. Pehrson was injured which was on September 12th? [135] A. Yes, sir.

Q. Did you see him fall? A. Yes, sir.

Q. Where were you, Mr. VanSlike, when Mr. Pehrson fell?

A. I was on the bottom step, coming out of the door.

Q. If you will step down here and show the jury where you were, please, at the time Mr. Pehrson fell? This is the canopy that you were speaking about, this is the brick wall here and this is the opening of the front door.

A. I was at this front door, the cement is carried out to here, about like that (indicating).

Q. Will you point out to the jury just what your position was when Mr. Pehrson fell?

A. I was standing about here on the bottom of the step.

Q. With relation to where you were standing, where did Mr. Pehrson fall?

A. In Front of me—one step more and he would have lit on top of me.

Q. Where was the ladder at the time?

A. It was leaning up against the building.

(Testimony of Richard VanSlike.)

Q. Can you place it on the model, just where the ladder was?

A. The ladder was in that position (indicating).

Q. Mr. VanSlike, Mr. Pehrson's body came down then between the right side of the ladder and the west wall of the building? [136]

A. Yes; he lit right about where that pointer is.

Q. How far to the right of the ladder, looking toward the building?

A. Three or four feet over.

Q. After Mr. Pehrson fell to the ground, did you go over and check the ladder, or take a look at it?

A. No; I didn't.

Q. Was the ladder still standing? A. Yes.

Q. Was it still standing in a normal position, so far as you could see?

A. So far as I could see, yes, sir.

Q. As I understand it, you didn't see Mr. Pehrson's body as he started to fall, and you don't know whether he fell from the ladder or the ledge, or where?

A. I don't know exactly where he fell from.

Mr. MacGillivray: You may cross-examine.

Cross-Examination

By Mr. James G. Towles:

Q. On the day in question here, did you have any occasion to go outside of the building and to go around on the outside?

A. Our plumbing shed was on that side and to

(Testimony of Richard VanSlike.)

get in and out of the schoolhouse I would go out of that door and in it. [137]

Q. Did you go along on any other side other than the south side—this is the south side, is it not?

A. Yes; the south side.

Q. Did you go on the east, or the north, or the west, to your recollection?

A. Not to my recollection.

Q. Do you recall any other ladders being up against the roof of the building on the day in question?

A. No; not on that particular day; I don't know but there always were some others.

Q. Was that the ladder that was ordinarily used to get to the roof? A. Yes.

Q. Did a number of workmen use that ladder?

A. Oh, yes.

Q. You testified that the standard of that ladder reached approximately eighteen inches above the top of the canopy, is that correct? A. Yes.

Q. Under those circumstances, the top rung would be where in relation to the canopy?

A. I don't know exactly where it would be in relation to the canopy.

Q. Would it be about even with the top of the canopy? A. Yes; it could be. [138]

Q. Is it the ordinary thing that a ladder would only reach with the top rung to the point you were going to climb—would that be the ordinary way that a ladder would be placed?

A. Well, there are just so many rungs on the ladder and it is used for many purposes.

(Testimony of Richard VanSlike.)

Q. I guess you don't understand my question. Is it ordinary that a ladder of this length would be used to reach a point such as the top of the canopy?

A. Yes.

Q. Isn't it more ordinarily the case that a ladder would be much longer to reach that point?

A. Not ordinarily, no.

Q. When you reached the top of the ladder you practically were on the top rung, is that right?

A. I think there was a couple more rungs to go when I climbed up the ladder and stepped on the canopy.

Q. Aren't the rungs on the ladder about fourteen inches from the top of the standard? A. Yes.

Q. And if it was eighteen inches above the top of the canopy, then the top rung would be about even with the top of the canopy, isn't that right?

A. There was a rung higher than the top of the canopy.

Q. It could not have been much higher, [139] could it?

Judge Hawkins: We object to that as argumentative.

Q. I will ask this: Did you notice any rubbish or broken concrete blocks about the bottom of this ladder, on the day in question?

A. The usual amount of junk lay around.

Q. Do you recall whether this waste material had been there for any considerable period of time, or all during the construction, or was it just that day, or what?

(Testimony of Richard VanSlike.)

A. I believe that they had cleaned up the mess that the bricklayers had made.

Q. Had this particular rubbish been there very long, to your recollection?

A. Not to my recollection.

Mr. Towles: That's all.

Redirect Examination

By Mr. MacGillivray:

Q. Mr. VanSlike, as I understand it, the method that you used was that you would step from the ladder onto the canopy, it was a stepping operation there? A. Yes.

Q. And from the canopy you would throw your leg over the parapet wall and over onto the roof?

A. Yes, sir.

Mr. MacGillivray: That is all. [140]

Recross-Examination

By Mr. Towles:

Q. Did you walk all the way up to the top rung, that is, the one nearest the top of the ladder when you climbed up?

A. I would go to the one nearest the top of the canopy—I believe there was another one up further. I would walk up and step over on the ledge and on I would go.

Q. You stepped from the ladder onto the ledge?

A. Yes.

Mr. Towles: That's all.

Mr. MacGillivray: That is all.

LYLE RICHARDSON

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. MacGillivray:

Q. Where do you live, Mr. Richardson?

A. Boise, Idaho.

Q. And what is your occupation?

A. I am a carpenter by trade.

Q. A carpenter?

A. Yes. I am a superintendent now. I follow the construction building game.

Q. You are superintendent for whom?

A. The C. B. Lauch Construction [141] Company.

Q. How long have you been with the C. B. Lauch Construction Company? A. Since 1938.

Q. What type of construction does the C. B. Lauch Construction Company generally do?

A. General construction work, houses, schools, dwelling units, apartment units, hospitals, government installations, utility work such as sewer and water systems, sewage disposal plants, and all work of that nature.

Q. Did the C. B. Lauch Construction Company take a contract for the Bonner School District Number 82 some time in the spring of 1952?

A. That is correct.

Q. Did that contract cover the construction of the Cocolalla School, and did it cover anything else?

(Testimony of Lyle Richardson.)

A. The Cocolalla School and the Pack River School.

Q. Do you remember when you started construction on the Cocolalla School?

A. I don't remember the exact date, but I think probably the first part of May.

The Court: I think at this time I will excuse the jury for just a few minutes.

(In the absence of the Jury.)

The Court: In view of the Motion heretofore made, I neglected one matter that I intended to take care of, that is, I am striking from the [142] complaint any allegation of negligence on account of the accumulation of waste material and rubbish, particularly in the area and about the base of the ladder. There is no evidence to show that this accumulation had not been properly handled by the contractor. In other words, there is no evidence to show that it was there for any length of time or that anyone had any knowledge of its remaining there for any length of time at all. Mr. Bailiff, you may recall the jury.

(The following in the presence of the jury.)

The Court: Ladies and Gentlemen of the Jury, I have stricken from the Complaint here any allegation of negligence which alleges that the premises were not kept free of waste material and rubbish. There is no evidence submitted here to show that any accumulation of rubbish had been allowed

(Testimony of Lyle Richardson.)

to remain on the premises for any length of time. In other words, there is no evidence to show that the rubbish had not been promptly and properly removed after its accumulation, and there is no evidence to show that this had been here for any length of time except just the ordinary length of time that it would accumulate, and that leaves the matter entirely in connection with the ladder. I just wanted to advise counsel and the jury that I had taken that out of the pleadings. [143]

Q. Mr. Richardson, was the Cocolalla and the Pack River schools under course of construction at the same time? A. Yes; they were.

Q. And you were in charge for the C. B. Lauch Construction Company of the construction of both of those schools? A. Yes; I was.

Q. Was Mr. G. A. Pehrson the architect on both schools? A. Yes; he was.

Q. And were both of those schools similar in construction? A. They were.

Q. Now, on this question of grade to the south of the school building. On the plans and specification prepared by Mr. Pehrson there was a finish grade line provided as shown on the model which you see here? A. That is correct.

Q. When was that grading done with respect to September 12, 1952?

A. Well, the preliminary grading was done previous to any excavation. The original ground was approximately three feet lower, or even more, on the south side to what it was on the north side. In

(Testimony of Lyle Richardson.)

fact, it could have been as much as five feet, I don't recall. But, with power equipment, I made a cut on the north and a fill on the south side and that fill was extended out ten feet approximately beyond the building line. The reason for extending out was so that I could do the excavation with power [144] equipment and have the equipment setting on level ground at the time of the excavation so that the dragline would not be setting on a hillside. So the fill was made beyond the excavation for the footings so that the tires of the dragline, it was a truck-mounted dragline—so that it would operate on level ground.

Q. And at what point in the construction was that filling and grading done?

A. That was done probably in the first week of operation.

Q. And what was the grade line with reference to the finish line as shown on the model prepared by Mr. Pehrson, that is, on September 12, 1952?

A. The grade would vary throughout the south side from six inches from the top of the brick down to fourteen inches at the most in various locations.

Q. You mean, from the bottom of the brickwork?

A. Yes; from the bottom of the brickwork, which was the same as the finish floor.

Q. During the course of construction, were some ladders made there on the job by carpenters?

A. Yes.

Q. How many?

(Testimony of Lyle Richardson.)

A. Well, I don't know, but I imagine that we built as many, well, I would say eight at least.

Q. And what type of ladder? [145]

A. Well, they were all constructed with two-by-fours as the standards, and one-by-fours as the cleats.

Q. Were they different sizes?

A. Yes; they were different lengths and some different widths?

Q. How many ladders were used there as a means of gaining access to the roof?

A. Well, it depended on the amount of work and the number of men or workers, if the roofers were roofing they probably had one ladder and if they were doing cement finishing on the bond beam they would probably have one that they used, and if we were doing any work on the slashing, they would also use a ladder.

Q. Was there ordinarily one they kept on the north side of the building as a means of access to the roof?

A. Yes; that stayed there practically all of the time but sometimes it would be laying on the ground. Some of the workmen would come along and if they found that any particular ladder would be in their way, they would just lay it down and then some other man would come along and put it back up.

Q. And was there ordinarily a ladder kept on the west side as a means of access to the roof?

A. Yes, there was; that ladder on the west side of the building, a good amount of the time, was lay-

(Testimony of Lyle Richardson.)

ing down. We were a little crowded for room on the west side of the building. Whenever we would run a truck through there the [146] bottom end of that ladder would extend far enough out so that we would hook it with the truck and many times that ladder was laying down, but it was on the west side practically all of the time, it was either in one position or the other, it was up or laying on the ground.

Q. Mr. Richardson, do you recall a sixteen-foot ladder that was used as a means of access to the canopy and then to the roof on the south side of the building?

A. Yes, sir; I do.

Q. That ladder was constructed of what?

A. Two-by-four standards with one-by-four cleats.

Q. The two-by-four standards were sixteen feet long?

A. I believe they were, yes.

Q. And one-by-four rungs placed at what distance?

A. If I remember right the spacing on those ladders were fourteen inches from the top of one cleat to the top of the other—twelve-inch centers.

Q. And was that ladder solidly constructed?

A. In my opinion it was.

Q. During the progress of that job did you ever have any difficulty or any defect appear in that ladder itself?

A. Not to my knowledge.

Q. Referring particularly to that ladder on the south side, was it always in the same position or was it moved from spot to spot?

(Testimony of Lyle Richardson.)

A. It was moved from spot to spot; it was not always in the same position. [147]

Q. In what different positions would it be used as a means of access to that roof?

A. That was used on the face side of the canopy as well as leaning up against the building in the position Mr. Pehrson stated that it was in.

Q. And was that ladder built for use in that position on the south side of the building and adjacent to the front of the canopy?

A. No; I don't believe that it was. I think that it was a universal ladder, if it was built for any particular purpose it was built for the purpose of stoning the bond beam around the building—for access to and from the scaffold that was used and protruded down the wall from the top of the parapet wall and they used hangers and brackets that hung down from the parapet wall and they set planks on those and the workmen that stoned the bond beam used that ladder to get to and from that work, also to get to the top of the roof to move their brackets.

Q. When it was used as a means of access to the roof, either in front of the canopy or to the left, where did the top of the ladder extend with reference to the top of the canopy?

A. I cannot rightly state just the distance, but I think a person could walk up the ladder without any difficulty and still have hold of the two standards and step from [148] the ladder onto the canopy.

(Testimony of Lyle Richardson.)

Q. Now, then, had you ever used the ladder in getting up on the roof of the building from the canopy over the parapet wall?

A. Yes; I have.

Q. On how many occasions?

A. Well, at times probably as many as twenty times a day on some days and then others one or two times, maybe.

Q. And what method would you employ in getting on the ladder up to the canopy and over the parapet wall from the canopy?

A. I would walk up the ladder in the usual manner and step off on the canopy; it didn't seem to be any effort at all to maneuver from the ladder over to the canopy.

Q. Who else on the job, other than yourself, used that ladder?

A. Practically everyone that worked there. Laborers, roofers, plumbers, and I think just about everyone concerned with the construction work.

Q. Were any materials taken up to the roof by means of this ladder on the canopy and then over on the roof?

A. Yes; flashing—metal flashing, bridging, blocking and nails, in fact, all of the various materials that a person would or could carry in his arms, or a pail, that you would feel safe in going up the ladder with, [149] they were all taken up that way.

Q. How would the workmen carry materials? Would it be in one hand and use the other hand on the ladder?

(Testimony of Lyle Richardson.)

A. That would be the usual manner.

Q. And were buckets of mud carried up?

A. Well, not very much; maybe we would have a small amount of grout when we would put in our flashings or something like that, at those times we would probably carry a small amount of grout, maybe two and a half gallons in a five-gallon bucket would be taken up the ladder.

Q. How many times a day would that ladder be used by people there on the job?

A. I would only be making a rough guess, but I think I would be safe in putting the figure at about fifty times, or maybe more.

Q. That would be each and every day?

A. Yes.

Q. And it would be over what period of time, prior to September 12th had that ladder been used at that location and for that purpose, just approximately?

A. Well, the ladder was moved so much that it would be hard to say in that location and the time would vary, it would depend, of course, on where a person would want to use the ladder and where the person had used it last.

Q. In other words, the workmen would move the ladder to the desired point where they needed the ladder to reach a [150] certain point on the building? A. That is right.

Q. To your knowledge, prior to September 12th, had you or any workman had any difficulty in using that ladder in reaching the canopy and thereafter

(Testimony of Lyle Richardson.)

getting on the roof? A. Not to my knowledge.

Q. Before using a ladder, whether it is used in that location, either in front or at the side of the canopy or any other place, what precaution would be taken by yourself or any other workmen?

A. Well, I think it is second nature for anyone who has followed construction work, regardless of whether it is a ladder or what he is using, to use a certain measure of precaution in seeing where you are walking and see where you are going and to see that you don't step off in any hole, and if it is a ladder to see that the ladder is properly placed so that you don't endanger yourself.

Q. Is it the custom about a job like this to see that the ladder is solid at the bottom and solidly placed at the top?

A. Well, I usually pull back on the ladder, I expect it is on solid footing, but I usually pull the ladder back with one hand and let it fall back against the building before I proceed up the [151] ladder.

Q. And is that precaution taken by practically everyone in the building business?

A. I think it is. I think it is second nature to do that?

Q. Were you present when Mr. Pehrson fell?

A. No.

Q. Where were you?

A. I was in Spokane.

Q. Was that in connection with your work?

(Testimony of Lyle Richardson.)

A. Yes, I went to get some hardware that was to be used on construction of the building.

Q. And did you get back to the project before Mr. Pehrson was taken away?

A. I met the ambulance on the way back, and Mrs. Pehrson was driving either Mr. Pehrson's or Mrs. Pehrson's car. I recognized the car following the ambulance as I was going back to Cocolalla.

Q. When Mr. Pehrson came on the job, did you ordinarily go around with him on the inspection trips? A. Yes.

Q. And would you do the same at the Pack River School?

A. Yes, of course many times I didn't do that because I didn't go from one school to the other but if I was at the Pack River School when he came, I went with him.

Q. But you would go with him at times?

A. Yes. As I say, I never went from one school to the other with him. [152]

Mr. Towles: If the Court please, I feel that this testimony should be limited to the day the accident happened.

The Court: I will let him go ahead.

Q. Did you use the same type of ladders as a means of access to the upper portions of the building at the Pack River school job?

A. Yes, the same sort of ladders. I think probably all of the ladders were built at Cocolalla and taken over to the Pack River school.

(Testimony of Lyle Richardson.)

Q. And is it customary in construction work, particularly in construction of one-story buildings, to use ladders similar to those used on the Cocolalla school?

A. Yes, I think it is.

Mr. MacGillivray: You may examine.

Cross-Examination

By Mr. James G. Towles:

Q. Mr. Richardson, I believe that you testified that this ladder was originally built to reach some scaffolding on the side of the building?

A. I didn't say that it was originally built for that purpose. I said that it was originally used for that purpose.

Q. Using the pointer could you indicate to the jury, the [153] position of the scaffolding on the side of the wall when they were putting in this stoning that you talked about?

A. That scaffolding was hung from the top of the parapet wall down to that point there (indicating).

Q. And the top of the scaffolding would be even with the top of the bricks?

A. Somewhere in that neighborhood. It was used for the purpose of cleaning and checking the concrete.

Q. Do you know whether or not this ladder was correctly in position at the time of the accident?

A. I don't know that the ladder had any correct position. To my way of thinking it was in correct

(Testimony of Lyle Richardson.)

position regardless of where it was; it could be used anywhere on the building.

Q. But you don't know on the day in question because you were gone from the site?

A. That's right.

Q. Do you recall, Mr. Richardson, how long that ladder had been in this position before the accident?

A. No, I don't. It was a universal ladder and I don't recall where it was.

Q. You don't recall if it was used in any other place?

A. Yes, it was, definitely.

Q. Mr. Richardson, did you have any conversation at any time with any person in regard to this ladder, to your recollection? [154]

A. In what respect?

Q. As to whether the ladder was adequate?

A. I never did.

Q. You never had any conversation with any person about that to your recollection?

A. No, sir.

Mr. Towles: I think that's all.

Redirect Examination

By Mr. MacGillivray:

Q. Mr. Richardson, at any time during the course of this construction did Mr. Pehrson make any complaint to you about the use of the ladder in question?

A. No, sir.

Mr. MacGillivray: That's all.

Mr. Towles: That's all.

ALVIN SLENTZ

called as a witness by the defendant, after being first duly sworn, testifies as follows.

Direct Examination

By Mr. MacGillivray:

Q. What is your full name?

A. Alvin Slentz.

Q. Mr. Slentz, will you speak up so that the folks over there in the jury box can hear what you say? Where do you live? [155]

A. Spokane, Washington.

Q. By whom are you presently employed?

A. By Buscombe and Rau.

Q. Who are they?

A. General contractors.

Q. During the spring and summer of 1952, were you employed by the C. B. Lauch Construction Company of Boise, Idaho? A. I was.

Q. Were you during that time working at the Cocolalla school at Cocolalla, Idaho?

A. I was.

Q. What was your job on that project?

A. Cement mason.

Q. And what is the job of a cement mason?

A. Cement work, on this job grinding, patching, dressing the outside wall, window sills, foundation, and the parapet wall.

Q. Did your work entail working on the roof and the upper portion of the building?

(Testimony of Alvin Slentz.)

A. Yes, it did.

Q. Were you familiar with this ladder that we have been talking about that was used as a means of access on the south side of the canopy over the front entrance and over the parapet wall to the roof?

A. Yes.

Q. Did you use that ladder? [155-A]

A. Yes.

Q. For what purpose?

A. For getting up on the roof.

Q. Do you recall when the ladder was either on the side of the canopy or the front of it, where the top of the ladder extended with reference to the canopy itself?

A. Well, I believe that it was about two and a half feet above the top of the canopy.

Q. And what method would you use to reach the roof of the building in using that ladder at the front entrance on the south side?

A. I would go up the ladder and either hang onto the top of the ladder or get hold of the top of the parapet wall and step over on the canopy.

Q. Would you step or crawl over to the canopy?

A. I would step over.

Q. Did it reach high enough above the top of the canopy for you to step over from the ladder to the canopy?

A. Yes.

Q. Did you ever carry materials up that ladder?

(Testimony of Alvin Slentz.)

A. Not that I recall. Most of our material we took up with a rope.

Q. In other words, your material would be heavy cement material? A. That is right. [156]

Q. Do you know how many times you had used that ladder during the course of this work?

A. I imagine around ten times a day.

Q. Did you ever have any difficulty in going up or coming down that ladder? A. No, I didn't.

Q. Was the ladder solidly and firmly constructed? A. Yes, sir.

Q. Mr. Slentz, did you before using that ladder take any precaution to see whether it was solid on the bottom and solid at the top?

A. I do as a general rule, yes. I take that precaution on any ladder, and I think I did there.

Q. And that applies whether you were using this ladder or any other ladder? A. Yes.

Q. And you still do that? A. Yes.

Q. Do you recall whether you had used the ladder on the day that Mr. Pehrson had his fall?

A. I believe that we used it that morning.

Q. And by "we" who do you mean, whom are you referring to?

A. There were two cement masons on the job and we had some work on the cement wall there of the gym that we had not quite finished and we were going up there that morning and finishing [157] that.

(Testimony of Alvin Slentz.)

Q. How many times were you up and down the ladder that morning, you and your partner?

A. I would say approximately four or five times.

Q. And had either you or your partner placed the ladder that morning in the position that it was when Mr. Pehrson sustained his fall?

A. I think the ladder had been there in that position for some time previous to that.

Q. In using that ladder in that position four or five times before Mr. Pehrson used it, did you have any difficulty in using the ladder? A. No.

Q. Where were you when Mr. Pehrson fell?

A. I was working on the foundation to the left of the ladder.

Q. Were you working alone or with your partner? A. I was with my partner.

Q. What were you working on? Were you finishing the foundation? A. Yes.

Q. How far to the left of the ladder were you and your partner working?

A. I think it was around fifty or sixty feet.

Q. Did you see Mr. Pehrson fall?

A. No, I didn't.

Q. Did you, after he fell, go over to the position where he was? [158] A. Yes.

Q. Was Mr. Van Slike there when you got there? A. Yes.

Q. Do you recall where Mr. Pehrson was in reference to the ladder itself?

A. At the foot of the ladder.

(Testimony of Alvin Slentz.)

Q. On one side or the other of the ladder, do you recall, was he to the left or the right as you looked toward the ladder?

A. He was lying to the right of the ladder as I was facing it.

Q. Did you look at the ladder and check the ladder after you got over there, to see what might have caused Mr. Pehrson to fall?

A. I looked to see if there was anything broke or if it was out of position.

Q. And what did you see?

A. Well, it was apparently all right. It seemed to be in the same position that it was.

Q. The ladder was still standing and the top of the ladder was against the wall of the building?

A. Yes, sir.

Q. And was it apparently in any different position than it had been when you used it earlier that morning?

A. I don't believe that it was.

Q. And of course you don't know what caused Mr. Pehrson to [159] fall, or how he did fall?

A. No, I don't.

Q. Prior to the time of this fall, did Mr. Pehrson come to you or your partner and ask for any assistance in going up the ladder?

A. No, sir.

MR. MacGillivray: You may examine.

(Testimony of Alvin Slentz.)

Cross-Examination

By Mr. Therrett Towles:

Q. At this time when Mr. Pehrson got hurt and prior thereto that morning, were you working on the building?

A. We were working—there is a short concrete wall between the gymnasium—it is an extension of the gymnasium wall, and we were finishing that.

Q. Is that on the same side, the south side of the building, where the ladder is located? A. Yes.

Q. And how far from the place where the ladder is located?

A. Well, from there at the south side, I believe it is about twenty feet to where the concrete started.

Q. Twenty feet from where to this ladder—how many feet from this ladder were you working?

A. On the basement.

Q. My question is, how many feet from this ladder were you working on the south side of the building? [160]

A. I was working about fifty feet away.

Q. In which direction would that be from the ladder? A. That would be south.

Q. Will you take that model, and indicate where you were working, if you can?

Mr. MacGillivray: Mr. Slentz, you recognize the model there, and you see the canopy and the entrance and the window, the brickwork starts there

(Testimony of Alvin Slentz.)

(indicating). A. Yes.

Q. Mr. Towles wants to know and wants you to point out where you were working with reference to the ladder.

A. We were working on this foundation, about fifty feet from the bottom of the ladder.

Q. (By Mr. Towles): When did you go to work that morning?

A. About eight o'clock, it was at eight o'clock.

Q. And when did this accident happen?

A. I don't recall the time.

Q. Was it before lunch?

A. I think it was after lunch.

Q. You are not sure when the accident happened? A. No, I am not.

Q. You were doing some job of masonry, were you? A. No.

Q. What were you doing?

A. We were sacking concrete. [161]

Q. What do you mean by that?

A. Grinding and sacking, putting on mud in the holes and then we take a drier and wipe it off.

Q. You had a man with you? A. Yes.

Q. You had worked at that all morning?

A. Yes.

Q. Why did you go up this ladder that you testified to—you say that you went up the ladder; how did you do that if you were doing that work all of that morning?

(Testimony of Alvin Slentz.)

A. This wall extends over. It is a concrete wall there back about eight feet from this corner and we finished, we were finishing on that wall and had some work to do that morning. We finished that up and then we went up to finish this here. When we finished that we went back down and went to work over here (indicating).

Q. When did you get through your work on the high wall?

A. Well, I imagine it was about nine o'clock.

Q. You never went up this ladder after nine o'clock up to the time Mr. Pehrson fell?

A. I don't believe so.

Q. Do you know Mr. Hurst when you see him?

A. I believe I do.

Q. And did you know that he was on top of the building at the time Mr. Pehrson fell?

A. Yes. [162]

Q. So that he came down the ladder after Mr. Pehrson had fallen? A. Yes.

Q. And would it be customary for Mr. Hurst, before he came down, to put the ladder in place or in position? A. Yes.

Q. In other words, anyone coming down the ladder would see that it was in position?

A. Yes, I imagine so.

Q. He came down after Mr. Pherson had fallen?

A. Yes, sir.

Q. Did you check that ladder after Mr. Pehrson got hurt?

(Testimony of Alvin Slentz.)

A. No, I never checked it. I looked at it to see if I could see anything wrong with it.

Q. Was that after Mr. Hurst had come down from the top of the building? A. Yes, sir.

Mr. Towles: That's all.

Redirect Examination

By Mr. MacGillivray:

Q. You say that you assumed Mr. Hurst would put the ladder in position before he attempted to go down?

A. Yes, I believe that it would be natural for him to do that.

Q. What I am getting at is whether Mr. Hurst or anyone else would go up the ladder or down the ladder, before they [163] did that they would see it was in position? A. Yes.

Mr. MacGillivray: That's all.

Recross-Examination

By Mr. Towles:

Q. Naturally, Mr. Hurst would do that after Mr. Pehrson had fallen from that ladder?

A. Yes, I imagine he would.

Mr. Towles: That's all.

Mr. MacGillivray: That's all.

The Court: We will take a recess for fifteen minutes.

October 22, 1954—11:15 A.M.

JOE A. CHLOUPEK

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Judge Hawkins:

Q. Where do you reside?

A. At Careywood, Idaho.

Q. What is your occupation?

A. Laborer, and I try to farm a little.

Q. Were you employed in the summer of 1952 by C. B. Lauch Construction Company on the Cololla school?

A. Yes. [164]

Q. When did you start on that project?

A. At the beginning, I don't remember the date, but it was about in May.

Q. And what were your duties?

A. Laborer, cleaning up around and hauling materials.

Q. You did whatever was assigned to you by the foreman?

A. Yes, sir.

Q. You had been employed continuously there from the beginning of the project at least to September 12th?

A. That is right.

Q. Do you remember the day that Mr. Pehrson was injured?

A. I don't recall the date but I was there.

Q. You remember the happening of the event?

A. Yes.

(Testimony of Joe A. Chloupek.)

Q. You were on the project that day?

A. Yes.

Q. Were you present when Mr. Pehrson fell?

A. I was there when he was at the ladder, and I was there when he was on the ground.

Q. Who was there when you got to Mr. Pehrson?

A. The plumber, Mr. Van Slike I think his name is.

Q. He was the first one to get there and you were the second, is that it? A. Yes.

Q. You were familiar with the fact that there was a ladder there? [165] A. Yes.

Q. Had you used that ladder? A. Yes.

Q. How many times had you used it that day?

A. A good many times.

Q. Did you have occasion in your duties to go up that ladder and onto the roof? A. Yes.

Q. And had you done that that day?

A. Yes.

Q. Why would you go up to the roof?

A. Well, we had some work up there and I had been going up and cleaning up on the roof.

Q. How would you use the ladder to get on the roof?

A. Climb up onto this sill and then over.

Q. How would you get from the ladder over on the canopy or the ledge?

A. You would step over from the ladder to this balcony or whatever you call it.

Q. And then step over the parapet and onto the

(Testimony of Joe A. Chloupek.)

roof? A. That is right.

Q. And did you do that on September 12th, the day Mr. Pehrson was injured?

A. That's right.

Q. I will ask you to step down here and take a look at this model and then I will ask you whether that [166] represents the condition as it existed there that day?

A. Well, it looks to me as if the ladder should be longer.

Q. By longer you mean it should extend up further on the wall of the building?

A. Yes, because I don't think that you could step from here and reach down and get down the ladder. The ladder should be about half way up, about like this (indicating).

Q. So that you could walk up the ladder and step over the parapet?

A. You reached over to get hold of the ladder, from here (indicating).

Q. And could you do it on that day, on September 12th? A. That's right.

Q. This model does not show that any slab had been poured at the entrance way, had the slab been poured at the entrance way at the time of the accident? A. Right in front of the door?

Q. Yes. A. There was a step there.

Q. Handing you Exhibit Ten, what is that?

A. That is the front entrance.

Q. At the time of the accident was the sidewalks poured? A. No.

(Testimony of Joe A. Chloupek.)

Q. Was the slab in the front entrance way of the door poured? A. Yes.

Q. And that slab was poured up to how close to the brick line? [167]

A. I suppose that would be about eight inches.

Q. And that portion of the entrance way was completed on the day of this accident?

A. As I recall, yes.

Q. And the sidewalk itself extending from that entrance out had not been poured? A. No.

Q. What do you say as to the ground level as it existed on that day compared to the level of that slab poured in the doorway?

A. I believe that ground should have been a trifle higher to the bottom step.

Q. Higher than the step itself?

A. Yes, because in front all the way through I suppose about six or eight feet from the wall it had to taper up because this ground had settled against the foundation, it had tapered in, and I think if you would walk along this ledge of dirt you would possibly step down to the first step.

Q. And that ledge of dirt was out just a little?

A. Just a little, yes.

Q. Would that be about where the foot of the ladder was?

A. The foot of the ladder would be up against there, yes, on that bank.

Q. And comparing that picture, Exhibit Ten, with this model, are the ground levels the [168] same? A. I would say no.

(Testimony of Joe A. Chloupek.)

Q. Which is lower?

A. I believe this is. It should have been more sloping down about here at the bottom (indicating).

Q. Does the picture, Exhibit Number Ten, correctly reflect the ground level as of the 12th of September? A. No.

Q. Was it higher or lower?

A. I would say higher.

Q. The ground itself was higher than is shown here, so that a ladder resting on the ground as it was on September 12th would be higher than it would be shown here today? A. Yes.

Q. Did you ever have any trouble in going up that ladder and onto the roof? A. No.

Q. What precautions do you take prior to using a ladder either in ascending or going down?

A. I think it is an instinct to see that it is safe before you ever go up it. You naturally get a hold to see that it is solid.

Q. You test it to see that it is solid?

A. I think that is an instinct of a human being.

Q. You test the footing as well as seeing that it rests against the building?

A. That is right. [169]

Judge Hawkins: You may inquire.

Cross-Examination

By Mr. James G. Towles:

Q. Mr. Chloupek, did you test this ladder every time you went up to see that it was solid?

(Testimony of Joe A. Chloupek.)

A. I think it is an instinct to test it as you go up.

Q. Did you ordinarily just look at the ladder to see that it was in place?

A. Well, you would notice the ladder as you work around it, yes.

Q. But every time you don't pull it out from the building and then let it fall back against the building again, do you?

A. I don't think that you would do that, now.

Q. You don't think that is the ordinary thing to do? A. No.

Q. You spoke about this ridge of dirt being higher than is shown in the picture, Exhibit Number Ten I believe it is. Could you state to the best of your recollection how far back that ridge of dirt extended?

A. I think that I stated about six or eight feet—it was level at one time but I think that they were at times bringing in fresh dirt and I recall that we had water along the edge at some times and it had settled it against [170] the foundation and naturally it had settled down and tapered some.

Q. Isn't it a fact that they were still working on the foundation as Mr. Slentz testified?

A. I suppose that they were.

Q. Now then, isn't it a fact that Exhibit Number Ten shows the dirt is almost to the top of the concrete foundation wall? A. No, it is not.

Q. Within six or eight inches from the top of the wall?

(Testimony of Joe A. Chloupek.)

A. From the top of the concrete wall.

Q. Now from here (indicating) to the dirt, did you say it was six or eight inches?

A. I think it is six or eight inches from the step up, but it is below the step there (indicating). This is tapered out here from this point and it was higher here (indicating).

Q. Then could you explain to the jury how they could work on the foundation wall?

A. As I said, it had settled there and I don't know how much of the foundation they worked on.

Q. You don't know for sure the way it was there?

A. Well, I know that you could see the wall through there, but the ground had settled and I know there was a ridge through here (indicating).

Q. Do you know how deep the foundation wall was in the ground? [171]

A. Well, I suppose that it was down there about four and a half feet. I know that I helped dig that out.

Q. How much of the foundation was showing at that time?

A. Oh, I suppose there was better than a foot, probably fifteen inches I would suppose.

Q. Let me ask, have you had considerable amount of experience in climbing ladders?

A. Yes, I have.

Q. Is there any general rule of thumb that you use to determine how far the bottom of the ladder

(Testimony of Joe A. Chloupek.)

should be away from the wall that you are to climb?

A. Well, I would say that you would have enough slant so that you would feel safe.

Q. Would that be about one-fourth of the length of the ladder?

A. Well, I cannot say as to distance, but you could tell the slant you need to feel safe.

Q. Is it customary——

A. You couldn't climb the ladder if it was just about straight up and down.

Q. ——I understand, but is it customary if you are going to carry material besides the weight of your body, to have more of a slant?

A. Yes, you would have some slant, maybe a little more slant to it. [172]

Q. You would have the base of the ladder farther away from the wall?

A. Yes, if you are carrying material I believe you would.

Q. And do you recall how far the base of this ladder was away from the wall?

A. That would be quite hard to say, it might be three or four feet.

Q. Did it have quite a slope or slant to it or is it up against the wall?

A. No, it is not up against the wall.

Q. You would say that it was three or four feet away from the bottom of the wall, would you?

A. Possibly. I wouldn't know the distance because, of course, I didn't measure it.

Q. Do you know the distance between the top of

(Testimony of Joe A. Chloupek.)

the concrete ledge and the ground level at that time?

A. You mean the top of the roof down?

Q. No—from the top of the ledge down.

A. No, I don't recall, but I suppose it is about fourteen feet, I would say thirteen or fourteen feet.

Q. And if the ladder was four feet away from the bottom of the wall and it had a fourteen-foot distance to go up the wall, then, it couldn't have extended very far above that point, could it?

A. I don't think that your ladder is long enough for this model. [173]

Q. Wasn't that a sixteen foot ladder?

A. I don't know just what your ladder was there, but I don't think that this is long enough for this model.

Q. Was this over there in position?

A. It wasn't extending from the roof.

Q. Where was it setting?

A. I would say about half way, because you sort of reached over to get hold of this edge. I think it was about like that (indicating).

Q. In other words, the top rung of the ladder would be a little bit above the top of the ledge?

A. I am sure of that, yes. This ladder should have been setting about like that (indicating), about half way between.

Q. And the ordinary person is about five and a half or six feet—between that—tall?

A. I suppose.

Q. Is it also true that there is about one foot in between each of the rungs?

(Testimony of Joe A. Chloupek.)

A. Yes, I suppose so.

Q. And in order for a person to firmly grasp the top of the parapet wall he would have to be within six feet of the top of the wall?

A. Will you state that again, please?

Q. Yes, in order to firmly grasp the top of the parapet wall and climb to the ledge he would have to be within [174] six feet of the top?

A. To get his foot on that (indicating)?

Q. Yes. A. According to this, yes.

Q. And if he came up and stood on the second rung of the ladder—do you see what I am getting at?

A. Yes, I see.

Q. Which is ordinarily, as I understand the testimony, that is the way everybody got up there, they got up on the second rung and stepped over onto the ledge.

A. Well, I don't know if you could get in the position to do that or not. If it was higher you possibly could, yes.

Q. But if they were that far up on the ladder, then they couldn't possibly hold onto the ladder with their hands, could they?

A. Well, if you are climbing onto the balcony there, you could probably reach the top, yes.

Q. If you are standing on the second rung of the ladder it is obvious that the top standard of the ladder which is at this point here (indicating), the top of the standard there is only about two or two and a half feet from the bottom of your foot, isn't that right?

(Testimony of Joe A. Chloupek.)

Judge Hawkins: Do you understand what he is talking about? A. Well, I am not sure.

Q. You are standing on the second rung now, is that clear? [175]

A. Yes, but according to this it would not be two feet, would it?

Q. Well, I believe that you testified that those rungs were on **twelve-inch centers**.

A. Oh, yes, two feet, that is right.

Q. And ordinarily the standard would extend another twelve inches? A. Yes, that is right.

Q. So it would be rather difficult to grasp the top of the standard and stand on the second rung?

A. You probably could, that is, if you were a short man.

Q. He would have to be very short, wouldn't he?

A. That's right.

Q. And if he was standing on the next to the top rung, it would be practically impossible for him to have any other contact with the ladder except with his feet?

A. If he reached high enough, that would be right, yes.

Q. And moving to the right or to the left would tend to throw the ladder one way or another, isn't that true?

A. Not if the ladder is solid, not if he got a good grasp.

Q. Or, of course, if the ladder was tied to the top, is that true? A. That is right.

(Testimony of Joe A. Chloupek.)

Q. And was this ladder tied at the top?

A. It was not.

Mr. Towles: That is all, you may examine. [176]

Redirect Examination

By Judge Hawkins:

Q. Mr. Chloupek, was it necessary to get hold of the parapet in order to get from the ladder over onto the ledge, or could you walk up the ladder and just step over onto the ledge?

A. I think we got up high enough so that we could get hold of the top. I just don't recall exactly right now.

Q. You could do it either way, is that right?

A. It seemed to me that we could, yes. We would always take a safe precaution in getting down by holding on.

Judge Hawkins: That is all.

Recross-Examination

By Mr. Towles:

Q. What was it that you took hold of, was it the top of the parapet wall or the ladder?

A. Coming down or going up?

Q. Either way.

A. I think you would get hold of the top of the wall to hold on in going over; you wouldn't just step right out.

Q. You couldn't just bend all the way over and get hold of the top of the ladder?

(Testimony of Joe A. Chloupek.)

A. I don't think that the ladder was that low, that is that you would have to bend over.

Q. Did you or didn't you, when you were up there; you must remember? [177]

A. Will you state that question again?

Q. You must have remembered in going on and off that roof and getting on and off that ladder, whether you took hold of the top of the ladder standard or whether you took hold of the wall?

A. You would have to get hold of the wall as you got over on the balcony.

Mr. Towles: I think that's all.

Judge Hawkins: That is all.

ARNOLD PIEHL

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Judge Hawkins:

Q. Where do you reside, Mr. Piehl?

A. At Sandpoint, Idaho.

Q. And what is your occupation?

A. I am a carpenter.

Q. And how long have you been a carpenter?

A. Oh, I did carpenter work since 1925—I would say between 1925 and 1930.

Q. How old are you, Mr. Piehl?

A. I am fifty-five years old.

Q. Incidentally, how tall are you?

(Testimony of Arnold Piehl.)

A. I am about five feet and two inches, two or three inches. [178]

Q. Were you employed on the construction of the Cocolalla school? A. Yes, I was.

Q. And in what capacity? A. Carpenter.

Q. Were you employed there from about the beginning of the job down to its conclusion?

A. No, I wasn't there right at the beginning. I was there after they had started and then I worked there for about two weeks, and then after that I went over to the Pack River school.

Q. You say that you were there about two weeks? A. Yes.

Q. Were you there when Mr. Pehrson fell from the roof; do you recall that incident?

A. I was called back to the Cocolalla School to help finish up there. I was called back from the Pack River School, yes, I was there at that time.

Q. How long were you there prior to this accident if you recall?

A. I don't recall for certain if it was the same day or the day before I came back. That is, I don't recall whether I came back that day or a day before.

Q. Are you familiar with the ladder that was placed against the building near the entrance way on the south side of the school? [179]

A. Yes, sir.

Q. Had you used that ladder there at times?

A. Yes.

Q. How many times had you used it?

(Testimony of Arnold Piehl.)

A. I don't know exactly how many times—when I came back from the Pack River School I put the flashing on the top part of the parapet wall.

Q. That is the parapet wall along the front of the school there?

A. The low wall where the rooms are, not where the gym is.

Q. Had you ever used this ladder at this particular location? A. Yes, I had.

Q. Had you ever had any difficulty in using it?

A. No.

Q. How would you get onto the roof by means of that ladder?

A. The way that I got on the roof, I would climb up the ladder and step over on the balcony there, or the canopy or whatever you call it, and then jump over the parapet wall.

Q. Had you done that many times?

A. Yes, I had.

Q. Had you ever had any difficulty in doing it?

A. No, I hadn't.

Q. Did you carry tools with you?

A. Yes, I did.

Q. So that you would have but one hand free to use on the ladder? [180] A. Yes.

Q. Did you ever have any difficulty in getting up that ladder and over on the canopy and thence over on the roof? A. No.

Q. Did you ever have any trouble coming down that ladder from the roof? A. No.

(Testimony of Arnold Piehl.)

Q. Was that ladder built in accordance with construction of ladders on jobs of that kind?

A. I think that it was. Of course, I cannot say for sure.

Q. There were ladders there, around the building there to use in getting on the roof at different places and from different points?

A. As I recall the day that we were there working in putting on the flashing, there were different ladders there—you call this the south side—then, yes, there would be a ladder over on the east side of the building.

Q. Now, were you there the day that Mr. Pehrson fell? A. Yes, I was.

Q. Did you see him fall? A. No.

Q. Did you come up to the scene of where he was lying after the accident? A. Yes.

Q. You saw him lying there? [181]

A. Yes, when I came out. I was eating my dinner at the time and someone came and said that he fell and I went out and he was sitting on a concrete block—I believe it was a concrete block.

Q. Were you there when he was taken in an ambulance, when he was put in an ambulance and taken away?

A. I didn't see that. I had gone to work by that time.

Q. Which side of the ladder, as you faced the ladder and looking toward the school, which side was he on, if you recall, or do you recall?

(Testimony of Arnold Piehl.)

A. I have an idea——

Q. You can step down and look at this model if you care to. Do you recognize that?

A. ——Yes, I think that he was sitting about here (indicating).

Q. You are pointing to a point that is to your right a little bit?

A. Yes, I would call it to the right of the ladder if I was facing it.

Q. Yes, that is what I mean. A. Yes, sir.

Q. And he was lying or sitting in that position when you saw him? A. Yes.

Q. Did you look at the ladder at that time and notice if it was still standing there?

A. It was still standing, but I didn't pay any attention to the ladder. [182]

Q. Did you see anything wrong with the ladder at that time? A. No.

Q. Was it standing at a proper angle?

A. It seemed to me that it was standing the same way that it always was.

Q. What precautions do you take, Mr. Piehl, before climbing any ladder?

A. Well, I usually have my hands full of tools and I step on the first round, and if it doesn't move then it is safe for me to go on up. That is the way I always figure it.

Q. That is after you put your foot on it to test it to see if it is solid?

A. Well, it will wiggle all right if you have your hands full of tools and step on the first round. It

(Testimony of Arnold Piehl.)

moves a little one way or the other and it will move for sure one way or the other if it ain't solid.

Q. And had that ladder ever wiggled one way or another with you when you used it to go onto the roof? A. No, not that I recall.

Q. And had it wiggled, would you have stopped and adjusted it so that it would not wiggle?

A. I most certainly would, yes.

Judge Hawkins: That's all, you may [183] examine.

Cross-Examination

By Mr. James G. Towles:

Q. You have stated, Mr. Piehl, that Mr. Pehrson was sitting on a concrete block. Now, was he sitting or lying on that concrete block?

A. To my knowledge, he was sitting on the concrete block.

Q. And you also stated that you don't stop and pull the ladder out from the building and let it fall back and pull out any block from under the bottom, you just step on the ladder and go on up?

A. If you have your hands full of tools, you don't do too much pulling around of the ladder. If you step on the first round and it doesn't move or give then it is safe to go on up.

Q. It isn't customary, then, to adjust the ladder and move it back and forth and determine if it is solid? A. A lot of them do, but I don't.

Q. Is it the customary thing; do you see the workmen ordinarily do it?

(Testimony of Arnold Piehl.)

A. I see some of them do it and some of them don't.

Q. Would you say that the majority of them do it?

A. Quite a few of the boys do, some of them don't.

Q. Mr. Piehl, you are naturally familiar with the length of two-by-fours, and by looking at them you could tell about the length of a certain two-by-four, you could estimate that? A. Yes. [184]

Q. How long would you say that the standards were on this ladder?

A. I would say that they were sixteen foot anyway.

Q. Did you notice whether this ladder was fastened at the top?

A. I don't think that it was.

Q. Was it fastened at any other place?

A. I don't think so, no.

Q. You mentioned the fact that you had your arm full or your hand full of tools when you stepped on the ladder. Did you ordinarily carry them in a box? A. Yes.

Q. Then you always had one hand free so that you could climb up the ladder? A. Yes.

Q. And then when you got to the top of the ladder, did you take hold of the top of the parapet wall? A. No.

Q. You just stepped right off onto the top of the concrete ledge? A. Yes, sir.

Q. Do you recall approximately how high it is

(Testimony of Arnold Piehl.)

from the top of the concrete ledge to the top of the parapet wall?

A. I would say that it would be about eleven feet or a little better.

Q. I believe that you must have misunderstood me—from [185] the top of the parapet wall to the top of the ledge—from the top of this wall here to the top of this ledge (indicating).

A. I see, that would be about thirty inches. I know that I had to put my hands up there and put the tools over first and jump up because I am too short to step over, it was too high for me.

Q. In other words, ordinarily you would have to jump over the top of the parapet when you got on top of that ledge? A. Yes.

Mr. Towles: That is all.

Judge Hawkins: That is all.

EDGAR JUDY

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Judge Hawkins:

Q. Will you state your name, please?

A. Edgar Judy.

Q. And your age, Mr. Judy?

A. Forty-one.

Q. Where do you reside?

A. At Careywood.

Q. And that is not far from Cocolalla?

(Testimony of Edgar Judy.)

A. Four miles. [186]

Q. What is your occupation?

A. I am a laborer and farmer.

Q. Do you do carpenter work?

A. Well, I am a laborer, I have done labor.

Q. Did you work on the project known as the Cocolalla school? A. Yes, I did.

Q. In what capacity? A. Well, I was——

Q. What were your duties there?

A. ——I helped the carpenters, I furnished materials to them and I cleaned up around the place there. I just did various jobs.

Q. You did about the same thing as Mr. Chloupek? A. Yes.

Q. Were you working there prior to September 12, 1952? A. Yes.

Q. How long did you work there?

A. I started in May, I guess it was.

Q. And you worked there until after September 12th? A. Yes, I did.

Q. In the course of your employment there, did you see Mr. Pehrson around the project from time to time? A. Yes.

Q. Do you recall how many times you saw him there?

A. I guess probably once a week. [187]

Q. About once a week during the time that you were there? A. Yes.

Q. Did you see him going around the premises and inspecting the various parts of the premises?

A. Yes.

(Testimony of Edgar Judy.)

Q. Did you see him there on September 12th?

A. I don't remember, but I believe that I did.

Q. You didn't see him fall?

A. No, I didn't.

Q. You know the ladder that we have been talking about here?

A. Yes.

Q. The ladder that was near the entrance on the south side of the building?

A. Yes.

Q. Had you ever used that ladder?

A. Yes, quite often.

Q. And for what purpose did you use it?

A. To get on and off the roof.

Q. Did you carry materials up and bring them back?

A. Yes.

Q. In your hands?

A. Yes, such material as nails and maybe a skill saw, or something like that.

Q. Yes, tools that a carpenter ordinarily would need in his work?

A. Yes. [188]

Q. How many times did you climb up and down that particular ladder at that school building?

A. Well, I don't know, it would depend on the job that they were doing and how much material they used.

Q. Did you go up there several times a day?

A. Yes.

Q. Every day?

A. Yes, I believe every day.

Q. This ladder was located next to the canopy there, was it?

A. Yes.

(Testimony of Edgar Judy.)

Q. And did it lean against the wall of the building? A. Yes.

Q. The footings were in the ground solidly?

A. Yes.

Q. Did you ever have any difficulty in the use of that ladder, that is, in the swaying or shifting in any way? A. No.

Q. Was it built solidly and strong and sturdy?

A. I remember it was a good, sturdy ladder.

Q. As you went to the roof, using that means, would you step over onto the ledge or the canopy?

A. I am sure that I stepped over onto the canopy from the ladder.

Q. How did you get on the roof after you got on the canopy?

A. Well, at the parapet wall there I kind of boosted myself over it. I would throw one leg [189] over.

Q. Now then, that canopy, how wide was that from the wall out?

A. I would say that it was as wide as that table (indicating).

Q. There was plenty of room to stand on it?

A. Yes.

Q. As wide as the table I am sitting at?

A. Yes.

Q. In the event of using a ladder, what precautions do you take to see that the ladder is safe?

A. I think that a person's natural instinct is that he feels to see if it is solid and safe before he goes on up.

(Testimony of Edgar Judy.)

Q. That is the precaution that you take before you use one? A. Yes.

Q. You are not now employed by the Lauch Construction Company? A. No, I am not.

Q. You are just farming now? A. Yes.
Judge Hawkins: That is all.

Cross-Examination

By Mr. James G. Towles:

Q. Mr. Judy, was this ladder the main means of access to this roof? A. Yes.

Q. That is what most everybody used to get up there? [190]

A. This ladder, at that time, was the one that we used the most, it was the handiest.

Q. Do you recall whether or not, on that day, there were any other ladders in the vicinity there, in the vicinity of the building and about that place?

A. I don't think there was on that side of the building.

Q. Was there any on any other side of the building that day?

A. I am not sure, I don't remember about that day exactly, but I do remember that there was three about the building, one on the end and one at this canopy and then there was one on the other side about straight across.

Q. And they were ordinarily laying down or standing up against the building?

A. The one on the end some of the time was

(Testimony of Edgar Judy.)

down because they would move it to take equipment through there.

Q. Was there any ladder on that building that reached over the parapet wall at any time?

A. Yes, it did, the one that was on the other side of the building.

Q. It went over the top of the wall, did it?

A. Yes, it did.

Q. Now a ladder such as that, one that goes over the top of the wall, is it easier or safer to use?

Judge Hawkins: Safer than what?

Q. Safer than the ladder such as we have here?

A. Where you have the ledge there, I believe that this [191] kind of a ladder was probably the best to get on the roof.

Q. When you reached the point to step on the ledge what did you hold with; that is, what did you use your hand to hold on?

A. Well, the upper part was at least one rung above the ledge and I would hold the ladder with my left hand.

Q. Would you give that answer again because I doubt whether anybody heard it.

A. When I would climb up to the ledge and would step over from the ladder I think there was at least one rung above the canopy, one rung of the ladder.

Q. Did you state that you would hold onto the ladder as you stepped over?

A. As I remember it, that is the way that I did.

Q. And you didn't hold onto the wall?

(Testimony of Edgar Judy.)

A. Probably at times I did, but I think the ladder is what I used.

Mr. Towles: That is all, Mr. Judy.

Judge Hawkins: That is all.

The Court: We will adjourn at this time until two o'clock this afternoon.

October 22, 1954, 2:00 P.M.

KERMIT BERGMAN

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. MacGillivray.

Q. Where do you live, Mr. Bergman?

A. Sandpoint, Idaho.

Q. What is your occupation?

A. Carpenter.

Q. How long have you been a carpenter?

A. For twenty years.

Q. By whom are you employed at this time?

A. I am employed at Libby, Montana, for the J. Neill Lumber Company.

Q. Were you employed for the C. B. Lauch Construction Company during the spring and summer of 1952 on the Cocolalla school? A. Yes.

Q. In what capacity? A. As a carpenter.

Q. When did you start on that job?

(Testimony of Kermit Bergman.)

A. I can't fix the exact date, but I think it was around the first part of August.

Q. So that you had worked there from the first of August at any rate, up to the 12th of September, when Mr. Pehrson had his fall?

A. Yes. [193]

Q. At the time that he had that fall, was the sidewalks in, in front of the building?

A. No, I don't think it was.

Q. Did you have anything to do with putting in

A. As I remember, I helped put in the forms the sidewalks subsequent to that time?

A. As I remember, I helped put in the forms for the sidewalks just prior to that time.

Q. The concrete slab and the step had been laid prior to that time? A. Yes.

Q. Did you have anything to do with laying the sidewalks after that?

A. Yes, I helped put the forms in for the sidewalk.

Q. Can you tell when the sidewalk was put in, in front of the building, that is, can you tell us, did you excavate to put in the forms or did you have to fill in?

A. We had to dig out about six inches.

Q. Do you remember what the ground level was immediately in front of the building in relation to the finish line immediately below the foundation?

A. As I remember it, when we put in the form for that first step, there was a grade there and one step and we had to dig down a little bit below the ground level to get the grade for that step.

(Testimony of Kermit Bergman.)

Q. So that after you put the first step in approaching [194] the building, would you have to step down for that or did you have to step up?

A. Directly in front, you would have to step up, but out towards the side it was about level with the top of the ground.

Q. Toward which side, would that be toward the left looking at the building?

A. Toward the left, yes.

Q. Are you familiar, Mr. Bergman, with the ladder that we have been talking about here that was used to get on the canopy and on the parapet wall?

A. Yes.

Q. Have you ever had occasion to use that ladder?

A. I have used it quite a number of times.

Q. How often each day would you use it?

A. I would say four or five times a day, at least.

Q. And was that for the purpose of getting on the roof?

A. Yes, sir.

Q. When you used that ladder, just how did you get from the ladder to the canopy and then onto the roof?

A. I would walk up the ladder, step over on the canopy and throw my leg over and get on the roof.

Q. And did the ladder extend far enough above the canopy so that you could step onto the canopy off the ladder without any difficulty?

A. As I remember it, yes. [195]

Q. And did you carry any carpenter tools or material or anything?

A. Oh, yes.

(Testimony of Kermit Bergman.)

Q. And what kind of equipment did you carry up there?

A. Well, tools that a carpenter generally uses, sometimes nails and sometimes a short piece of lumber.

Q. Did you take those up in a carpenter's tool box?

A. I don't remember ever taking any tool box up with me, but it was generally under one arm or in one hand.

Q. Did you ever have any difficulty in using that ladder, Mr. Bergman? A. No.

Q. Now then, was it your custom in using that ladder of any other ladder, that is any other portable ladder, to take any precautions to see that the ladder was solidly set at the bottom and the top before going up or going down the ladder?

A. I think any construction man takes that precaution. I know I always do.

Q. And having taken that precaution, you never had any difficulty with that ladder? A. No.

Q. Has it ever slid or shifted from one side to the other in your going up or coming down?

A. Not that I remember.

Q. Was that ladder a good, sturdy and solidly constructed ladder? [196]

A. Yes, it was almost a new ladder. I know it was recently built.

Q. Are you confident that it was built there on the job, on that project? A. Yes.

Q. Did you build it?

(Testimony of Kermit Bergman.)

A. No, I didn't help build it.

Q. Did you see other carpenters build it?

A. Yes.

Q. Were you present there on that project the day that Mr. Pehrson had a fall? A. Yes.

Q. Where were you working?

A. As I remember I was on the other side of the building at that time. I know I didn't see him fall.

Q. You didn't see him and you didn't know how or why he fell?

A. I didn't know very much about it until it was all over with.

Q. Did you come around to the front of the building after he had this fall, and before he was taken away? A. No, sir, I didn't.

Q. Then you didn't see Mr. Pehrson that day at all?

A. Oh, yes, I saw him before the accident.

Q. But after he sustained his fall, you didn't see him? A. No, sir. [197]

Mr. MacGillivray: That is all, you may examine.

Cross-Examination

By Mr. Funkhouser:

Q. On those occasions when you walked up that ladder did you go over the parapet wall, and if so, how?

A. I would throw my leg over, and then step over.

(Testimony of Kermit Bergman.)

Q. You would throw your leg over from the ladder? A. No, from that concrete ledge.

Q. When you would step onto the ledge would you put your hand over the parapet wall?

A. As I recall it, I never did it that way.

Q. You are not positive about that, are you?

A. I am quite positive.

Q. But you could be mistaken?

A. It is possible.

Q. When you would go up on that ladder, would you go up to the last round or the next to the last round?

A. No, it wasn't the last round, I think there were about two other rounds on the ladder.

Q. Now then, you tell the Court and the jury that there would be two more rounds ahead of you?

A. As I remember it there was, yes.

Q. You would step from the third round down?

A. I would say so.

Q. You would stand on that round and step up onto the ledge? A. Yes, I think so. [198]

Q. You think so, but you are not sure, are you?

A. No, it has been quite a while ago.

Q. You don't know, do you?

A. Well, no, not really, I don't.

Mr. Funkhouser: That is all.

(Testimony of Kermit Bergman.)

Redirect Examination

By Mr. MacGillivray:

Q. Whether you stepped from the second round, or the third, or the fourth, whichever one it was, you had no difficulty in going up the ladder and stepping from the ladder onto the ledge? A. No.

Mr. MacGillivray: That's all.

Mr. Funkhouser: That is all.

GERALD F. LOVELAND

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. MacGillivray:

Q. Will you state your name?

A. Gerald F. Loveland.

Q. Where do you live?

A. 9415 East Mission Avenue, Spokane, Washington.

Q. And what is your business or occupation?

A. General contractor. [199]

Q. How long have you been in that business?

A. Between fourteen and fifteen years.

Q. What kind of construction do you do?

A. Commercial work, mostly warehouses, churches and office buildings, and the like.

Q. Without going into any complete detail, will

(Testimony of Gerald F. Loveland.)

you just tell us what are two or three of the places you have constructed?

A. Well, in Couer d'Alene here we built the Christian Church in 1945, and in Kellogg we built the Thornhill McGlade Funeral Home and various warehouses and churches and office buildings in Spokane.

Q. Have you constructed any one-story school buildings? A. Yes, we have.

Q. Now then, in the construction of one-story school buildings where there is a parapet wall sixteen feet high, is it customary to use as a means of access to the roof of that building, a portable step-ladder? A. Yes, we use portable ladders.

Q. Is that what almost universally is used?

A. Yes, ladders are used.

Q. In this case—let me ask, have you ever seen the Cocolalla school building?

A. Only from the highway. I have never been over closer.

Q. The front entrance is constructed somewhat in accordance with this model, with the top of the parapet wall showing [200] here (indicating) and over the front entrance is a ledge or canopy approximately ten or eleven feet long and thirty inches deep and thirty-two inches below the top of the parapet wall; now, in order for the workmen to reach the roof of the building would it be common and the accepted practice to have a stepladder that could be leaned against the front of the canopy or against the wall of the building to the side of the

(Testimony of Gerald F. Loveland.)

canopy, extending far enough above the canopy so that the workmen could walk up and take their materials and set it down——

Mr. Funkhouser: Now, just a minute, if the Court please. This is three or four questions in one, it is a compound question and I don't believe that it is proper.

The Court: Well, if the witness understands, I will let him answer.

Mr. Funkhouser: He is suggesting that the witness state how he would do it and I don't believe it is proper.

The Court: He may answer.

Q. Now I presume that you remember how far I had gotten with the question?

A. Yes, I do.

Q. To continue, that the ladder extends far enough above the ledge or canopy so that a workman can climb up the [201] ladder and lay his materials on the canopy and step from the ladder to the canopy and then over the thirty-two inch parapet wall to the roof, would the use of a ladder be common and accepted practice in that?

A. I would say that it would be good practice.

Q. And in the use of ladders in the construction of buildings such as this, one-story buildings, where ladders are used in various ways and places, is it customary and common construction practice to tie the top of the ladder to the concrete wall of the building?

A. No, it is not.

Q. Mr. Loveland, what is the first precaution

(Testimony of Gerald F. Loveland.)

that any construction worker takes for his own safety in using portable ladders?

A. The first thing that we instruct our men is to inspect the footing and see that the ladder is on good footing.

Q. And what is the next point?

A. The next point is to see that you have the proper pitch so that there is no danger of falling backward.

Q. And do you take the precaution to see that the ladder is plumb against the surface at the top?

A. Yes.

Mr. MacGillivray: You may take the witness.

Cross-Examination

By Mr. Funkhouser:

Q. Isn't it a fact that ordinarily in the use of a ladder, [202] the ladder would extend all the way to the top of the building?

A. Not necessarily.

Q. Not necessarily but ordinarily that is true, would you say? A. No.

Q. How long have you been in the construction work?

A. Between fourteen and fifteen years.

Q. And what are you building at the present time?

A. At the present time we just completed a warehouse building.

Q. How many stories? A. One story.

(Testimony of Gerald F. Loveland.)

Q. You have been over to the Coliseum, have you not?

A. No, I haven't followed the Coliseum job; I haven't stopped at the job, I have been by there.

Q. And did you notice that where they were going on the roof with ladders that it extended even above the roof like this, this longer ladder here?

A. No, I haven't noticed anything on the Coliseum building.

Q. You have not observed that?

A. No, sir.

Q. When you are building a building in your work, you use short ladders do you?

A. We use both short and long ladders.

Q. Yes, you would have both?

A. Yes. [203]

Q. So that they could use both, you would have the long and the short?

A. We possibly would.

Mr. Funkhouser: That is all.

Redirect Examination

By Mr. MacGillivray:

Q. Height of the ladder would depend on the point that you wanted to reach? A. Yes.

Mr. MacGillivray: That is all.

Mr. Funkhouser: That is all.

CHARLES E. BRUNET

called as a witness by the defendant, after being first duly sworn, testifies as follows:

Direct Examination

By Mr. MacGillivray:

Q. Where do you live, Mr. Brunet?

A. 1821 East North.

Q. And what is your occupation?

A. Sheet metal roofing installation.

Q. And that is what is known as a roofing contractor? A. Yes.

Q. How long have you been in that business?

A. Since 1937.

Q. Do you sub-contract various types of construction? A. We do. [204]

Q. Is that both on one-story and multiple story buildings? A. Yes.

Q. What is customary in the construction business to be used, and what is customarily used as a means of access to the roof of one-story buildings?

A. Stepladders.

Q. And I assume the height of the ladder used would depend on the height of the surface you wanted to reach? A. That is right.

Q. By stepladders do you mean the kind of ladder that is shown here?

A. We use that kind of ladder, yes, that is recommended by the state, yes, we use that.

Q. That is the type that is commonly used?

A. Yes.

(Testimony of Charles E. Brunet.)

Q. In using such ladders, have you sometimes used those at different points or spots around the building? A. Yes.

Q. And when such ladders are used at different places about the building, is it commonly accepted practice in the construction work to nail down, or bolt down, or tie down the top of the ladder to the cement wall, or whatever type of surface it is?

A. No, it is not customarily done.

Q. I will ask you now, Mr. Brunet, what, in the construction business, is the first precaution that anyone takes for [205] his own safety in attempting to ascend or descend a portable ladder that is used in different positions about the building?

A. The footing.

Q. What do you mean?

A. That is the base, to see that it is solid and sound.

Q. You mean to see the standards are solidly placed?

A. The footings, the bottom, wherever you put the ladder to see that it is a form that doesn't tip, to see that the bottom is firm and that it does not tip from one side to the other.

Q. And do you, for your own safety, use the precaution of seeing that it is plumb at the top?

A. Yes, sir, absolutely, that is for the safety of the men.

Q. And any man in the construction business does that for his own safety?

A. Absolutely.

Mr. MacGillivray: You may cross-examine.

(Testimony of Charles E. Brunet.)

Cross-Examination

By Mr. Funkhouser:

Q. You speak of stepladders and also you said something about approved by the state by some regulation or safety code?

A. There are standards of ladders that are required by the state. It is termed a standard ladder. [206]

Q. And they let you use a stepladder up to twenty feet?

A. And extensions up to forty.

Q. When we look upon ladders and refer to them as stepladders, that is something like this, that is what we call a stepladder?

A. Not that type.

Q. Well, it is along that line (indicating)?

A. One single ladder, yes.

Q. And there is a lever in here, isn't there?

A. No.

Q. On a stepladder? A. No.

Q. Well, what do you mean, just explain what you mean by a stepladder?

A. Well, here is a single stepladder (indicating).

Q. And that is what you use?

A. Yes, and then they are used with extensions, an extension has a pin here and you can extend them on up.

Q. And you would use an extension ladder on a building of this character?

(Testimony of Charles E. Brunet.)

A. Not necessarily, the height has all the factors in that.

Q. If you were on a building like this, you would want a ladder to come to the top of the building?

A. Not necessarily.

Q. Not necessarily, why?

A. Well, it depends on what portion of the building you want to get to. [207]

Q. Well, to get material onto the top of the building?

A. You would extend it at least to the top.

Q. Yes, to the top of the building?

A. Yes.

Mr. Funkhouser: That is all.

Redirect Examination

By Mr. MacGillivray:

Q. If the point of getting off the ladder is a ledge or canopy such as shown on this model, would you use a ladder that is long enough so that the workmen can step off the ladder onto the canopy?

A. Yes, that is right.

Q. Assuming in this case that you had this canopy (indicating) which is thirty-two inches down below the top of the parapet wall and extending out from the parapet wall for thirty inches and is ten or eleven feet in width, would it be accepted practice in the construction business to have such a ladder either against the outside of the canopy itself or against the side of the canopy or at the wall high

(Testimony of Charles E. Brunet.)

enough so that a man climbing up from the front or the side can step off the ladder onto the canopy, and then from the canopy onto the roof?

A. Yes, many times we find that in the construction it is more convenient to put the ladder in one place or another, that is usually for the footing because during the construction of the building there are sometimes places [208] that you do not have access to.

Q. And in the case of the construction as it appears here, would it, in your opinion, as a roofing contractor, be more convenient for workmen attempting to get to the roof of the building to put material off on the canopy such as this, and then step off the ladder on the canopy and then over the parapet wall on the roof?

A. As far as we are concerned, we always use a hoist, that is customary.

Q. By materials, I mean carpenter materials such as nails, and so forth?

A. Well, we just use them for access purposes.

Q. Counsel has asked here about the Coliseum. Have you ever been over to the Coliseum?

A. I have been by there several times.

Mr. MacGillivray: That's all.

Mr. Funkhouser: That is all.

Mr. MacGillivray: The defendant rests, your Honor.

The Court: Do you have any rebuttal?

Mr. Towles: Yes, we will call Mr. Hurst.

The Court: I will let the jury retire for a moment. [209]

(In the absence of the Jury.)

The Court: What do you expect Mr. Hurst to testify to?

Mr. Towles: There has been testimony here that when Mr. Pehrson fell off the ladder it was in the same position that it should have been in at the top, and Mr. Hurst will testify that he was on the roof of the building and, of course, came down the ladder, and when he went to get on the ladder that the ladder had slipped over some little distance and it was not straight up and down but was leaning over and, of course, that he had to straighten——

Judge Hawkins: It is no different than the testimony that is already in the record by Mr. Pehrson, and we have introduced no testimony that would give rise to any such rebuttal, and we object to it.

The Court: I believe that it was a part of your case in chief, and, in fact, you went into all of the movements of this matter on your case in chief.

Mr. Towles: There is another matter here, at least an inference that at the time Mr. Pehrson fell that he was lying in front of the canopy which at least gives an inference that he fell from the canopy and not from the ladder. [210]

The Court: You have proved conclusively where he fell, on your case in chief, and you have proved already where he was when he regained conscious-

ness. If there is any objection to this rebuttal testimony I will sustain the objection.

Judge Hawkins: There is an objection, your Honor.

The Court: I will sustain your objection. You may recall the Jury, Mr. Bailiff.

(In the presence of the Jury.)

The Court: Do you have any further witnesses?

Mr. Towles: Yes, we will call Mr. Pehrson in rebuttal.

G. A. PEHRSON

having heretofore been duly sworn, testifies as follows in rebuttal.

Direct Examination

By Mr. Therrett Towles:

Q. Mr. Pehrson, did you have a conversation with Mr. Richardson, the Superintendent at that building, with reference to the situation as to where this ladder was located? A. Yes.

Q. How long before the accident was this?

A. I would say about a week previous. [211]

Q. What did you say to Mr. Richardson?

Judge Hawkins: Now I object to this. This certainly is a part of their case in chief. He had this conversation and it was known at the time they were putting on their case in chief and we will object to it as not proper rebuttal. We could go back over all of the evidence if this is allowed.

The Court: The objection is sustained.

(Testimony of G. A. Pehrson.)

Q. Do you want to make any statement in regard to the grade level around this ladder?

Judge Hawkins: We make the same objection to this.

The Court: Yes, we are just starting to try the case all over again. This witness testified to this at the time he was on the stand before. The objection is sustained.

Q. I will ask you this, can you stand on the second rung of a ladder and balance yourself without holding onto something?

Judge Hawkins: We object to this as incompetent, irrelevant and immaterial and calling for a conclusion of this witness. This is a part of their case in chief.

The Court: Yes, he went into everything concerning this ladder and it would not [212] be proper rebuttal. The objection is sustained.

Mr. Towles: The plaintiff rests.

Mr. MacGillivray: The defendant rests.

The Court: I will excuse the Jury for a moment again.

(In the absence of the Jury.)

The Court: I excused the Jury in order that you may renew your motion if you care to.

Mr. MacGillivray: Comes now the defendant at the conclusion of all of the evidence, both the defendant and the plaintiff having rested, and again challenges the legality of the evidence to sustain any verdict against the defendant and move for a

directed verdict in favor of the defendant and against the plaintiff, and makes the same motion and upon the same grounds as the previous motion. First, there is no evidence of any primary negligence on the part of the defendant. That ground is based upon the principle of law that the defendant owes Mr. Pehrson, as an invitee, of course, the duty to maintain the premises in a reasonably safe condition, but the law further being that such duty only exists, the law further being that such duty only exists insofar as latent hidden defects are concerned and that no such duty [213] arises or exists as between the defendant and the invitee upon the premises insofar as obvious or apparent dangers or defect, if any such exists, are concerned.

(Further remarks of counsel not reported.)

The Court: I will say to you at this time, Gentlemen, that I feel, just from a first impression that I have that the Motion should be granted. However, in view of the Rules and in view of the fact that you are given an opportunity to renew this Motion after verdict if you desire, and the Court then would then have time to consider it more thoroughly, I will, at this time, deny your motion, and I will ask Counsel to meet me in Chambers and we will go over the instructions. We will take a short recess at this time.

(The following proceedings after a short recess.)

The Court: I think, Gentlemen, I will limit you,

as you suggested, to one-half hour on a side, and you may divide the argument in any manner you desire.

(Argument to the Jury.)

INSTRUCTIONS OF THE COURT

The Court: Ladies and Gentlemen of the Jury: It is the duty of the Court at this point in the trial of this case to instruct you, or to advise you as members of the jury as to the principles of law applicable to this particular case. [214] At this point I want to impress it on the jury that you are the judges of the facts. It is your responsibility to pass on the questions of fact, and likewise it is my duty to pass on all questions of law, and it is your duty, and you must under your oaths, accept the instructions given you as the law in this case. I will also say to you that you should not take any particular statement of the Court or any particular portion of the instructions of the Court as being the whole law, and you should not place any undue emphasis on any portion of the instructions, but the instructions of the Court should be considered as a whole, applicable to the entire case.

You will also disregard any statement made by counsel on either side which is not sustained by the evidence, and any evidence which may have been offered on either side and not admitted by the Court, and any evidence which after the admission was stricken by the Court.

The Statements of the attorneys in the case, made at the trial and in their arguments are not evidence and should not be considered as such by you.

Your verdict must be based upon the evidence. In arriving at it you should not discuss or consider anything in connection with this case except the evidence received upon the trial.

It is your duty to weigh the evidence calmly and [215] dispassionately, to regard the interests of the parties to this action as the interests of strangers, to decide the issues upon the merits, and to arrive at your conclusion without regard to the effect, if any, your verdict may have upon the future welfare of the parties.

This is an action brought by the plaintiff, G. A. Pehrson, wherein he alleges that he suffered certain injuries which were caused by the alleged negligence of the defendant, Lauch Construction Company.

The negligence on which the plaintiff must rely for recovery is as to the use of a certain ladder. You have listened to the evidence presented here, and, I am sure, are well acquainted with the alleged act of negligence, and have it well in mind.

The defendant has filed its Answer in which it admits certain facts, but deny that there was any negligence on their part, and particularly, that any act of negligence contributed to or was the proximate cause of the plaintiff's injury.

As affirmative defenses the defendant alleges that the plaintiff's injury was brought about because of the plaintiff's own negligent acts, and further that he voluntarily assumed any risk.

The plaintiff has asked damages in the amount of \$100,000 for pain and suffering, \$220,000 for [216] loss of earning capacity and \$3,445.00 for hospital bills, physicians and surgeons' services, nursing, medicine, bandages, and other similiar services.

The defendant denies that they are liable to the plaintiff in this, or any other, amount.

This is only a brief summation of the pleadings, and is not to be considered by you as evidence in any sense.

In passing upon the issues in this case, you will bear in mind that the burden is upon the one who asserts the existence of a fact to establish it, and in a suit of this character to establish the fact by a preponderance of the evidence. By a preponderance of the evidence is not necessarily meant a greater number of witnesses, but a greater weight of the evidence. That is what the word "preponderance" means—evidence which convinces you that the truth lies upon this side, or that. It is that which is more convincing, more persuasive.

In this case the burden is upon the plaintiff in the first place to show by a preponderance of the evidence that the defendant was guilty of the negligence in the respect charged in the complaint, and

that the plaintiff has been damaged because of the defendant's negligence. [217]

This is an action for negligence against which the defendants defend upon the ground that they were not negligent, and, by way of an affirmative defense, upon the further ground of contributory negligence on the part of the plaintiff.

In determining this case you should first concern yourselves with determining whether or not the defendant has been guilty of the alleged negligence which was the proximate cause of the damages sustained by the plaintiff. If you find no negligence you need go no further and your verdict should be for the defendant

If you should find, however, the existence of such negligence as aforesaid on the part of the defendants, which was the proximate cause of the injuries, if any, sustained by the plaintiff, then your verdict should be for the plaintiff, unless you find that the injuries, if any, complained of by the plaintiff were contributed to by the negligence on the part of the plaintiff, and the extent of the consideration to be given by you to the plea of contributory negligence, as above referred to, will be found to be the subject of a later instruction.

Negligence may be defined as the performance of some act, the doing of some thing, which under the [218] circumstances a reasonably prudent and careful person would not do. You will see that it is a question of what ordinarily reasonably prudent

and careful persons, properly regardful of the rights of others, would do under the particular circumstances, or the converse. It is the leaving undone of something, some act, which such prudent and reasonably careful person would have done under the circumstances. It may be negligence of commission or negligence of omission.

By the phrases "reasonable care" or "ordinary care" as used in these instructions, is meant the exercise of that care and caution as would be exercised by a reasonably prudent person under the existing circumstances.

"Ordinary" or "reasonable" care are relative terms, and such care is proportionate to, and commensurate with, the danger involved; in other words, the greater the danger involved, the greater is the care required, although there is but one standard of care, and that is reasonable or ordinary care, as defined in these instructions.

Contributory negligence has been asserted as a defense in this case; by this plea it is meant that the plaintiff was negligent at the time of the accident in some of the particulars stated in the pleadings, which [219] negligence contributed to the injuries which he received. While the burden of proof ordinarily rests upon the defendant to prove by a preponderance of the evidence the plea of contributory negligence, nevertheless, you may also

consider the evidence adduced on the part of the plaintiff in determining whether or not the plaintiff was contributorily negligent, and whether that negligence was the proximate cause of his injury. Should you so find there could be no recovery in this case by the plaintiff. You will not consider this plea of contributory negligence unless you first find negligence on the part of the defendant.

The mere fact that the accident happened, considered alone, does not support an inference that some party or any party to this action was negligent.

A person may not cast the burden of his own protection upon another. Everyone owes to himself the duty of self-protection and the law will not permit one to close his eyes to danger and if injured thereby seek a remedy in damages against another, but he is bound to use his own intellect, senses and faculties for self-protection.

It was the duty of the plaintiff as the [220] architect of the building to make his inspections promptly and it was the duty of the defendant in the construction of said school building to take all necessary precautions for his safety while making such inspection.

You may take into consideration in this matter in arriving at your verdict the fact that the plaintiff has had about fifty years of experience as an architect in constructing and inspecting buildings and in the use of portable ladders and that because of that experience he was, or should have been, aware of and alert to apparent and obvious dangers incident thereto, and he was required to exercise the degree of care commensurate with his knowledge and experience that an ordinary prudent person possessing the same knowledge and experience would have exercised under the same or similiar circumstances.

It is a general rule of law that when one knows of a danger brought about by the negligence of another and understands and appreciates the risk therefrom and voluntarily exposes himself to such danger, he is precluded from recovery for resulting injuries.

In plaintiff's complaint, it is alleged that the defendant Lauch Construction Company was negligent in providing a ladder as a means of access to the roof of [221] the school building under construction in that the inadequate construction of the ladder and its position against the concrete ledge constituted and created a dangerous situation and a grave and serious menace and peril to the life and limb of the plaintiff while using said the only allegation that you are to consider. ladder as a means of access to the roof. This is

In this connection, if you should believe from the evidence that said ladder because of its construction and position against the building, did create a dangerous situation and a menace and peril to the safety of the plaintiff in using said ladder on September 12, 1952, but you further believe from the evidence that the plaintiff saw or knew, or by the reasonable exercise of his senses should have seen or known, and realized that the use of such ladder on that date as a means of access to the roof involved a danger or risk of injury to himself, then I instruct you that by voluntarily using said ladder on that date and exposing himself to such danger or risk of injury, the plaintiff assumed all such risk of injury and cannot recover in this action.

The defendant in this case was not an insurer of the safety of the plaintiff while upon the construction premises occupied by the defendant at Co-colalla, Idaho, but was required only to keep the premises and the [222] facilities provided and used thereon in such condition as an ordinarily prudent contractor under the same circumstances would deem reasonably sufficient for the safety of plaintiff and others upon the premises.

Such duty to keep the premises and facilities in reasonably safe condition applies only to defect or conditions which are in the nature of hidden dangers that are not known to one upon the premises and which would not be observed by him in the

exercise of reasonable care. One upon the premises, by invitation, express or implied, assumes all normal and ordinary risks attendant upon the use of the premises and the facilities thereon, and the occupant of the premises is under no duty to reconstruct or alter the premises and its facilities to obviate known or obvious dangers, nor is he liable for injury to one upon the premises from a danger which was obvious, or which should have been observed in the exercise of reasonable care.

If you should believe from the evidence in this case that the plaintiff's fall and resulting injuries, if any, were proximately caused by a defective or dangerous ladder upon the defendant's premises or in connection with the facilities used thereon, but you further find that such defective or dangerous condition or position of said ladder was an obvious one, or because of plaintiff's previous experience upon the premises, was as well known [223] to the plaintiff as it was to the defendant, then I instruct you that there can be no recovery in this action, and your verdict should be for the defendant.

Negligence is never presumed but must be proven, and it is possible, under the laws of the State of Idaho, for an accident to occur without wrongful acts on the part of either the plaintiff or the defendant.

Such an accident comes under the heading of an unavoidable accident, and if you find that neither the plaintiff nor the defendant were guilty of

such wrong conduct as would constitute negligence in this case, then I instruct you that the accident would be an unavoidable one, for which no one would be responsible, and that in such case your verdict should be for the defendant.

The opinion of experts is proper and competent evidence for you to consider, along with all the other evidence, facts and circumstances.

The weight to be given to the opinion of an expert is a question for the jury to determine, and you must determine what weight and credit you will give to any expert opinion the same as you are to determine what weight you should give to the testimony of any other witness in the case. [224]

You are the judges of the credibility of the witnesses and of the weight to be given to their testimony. That is your right and responsibility; not even the Court can deprive you of that right, or relieve you of the responsibility of determining the facts and passing on the weight and credibility of the testimony.

In determining the weight to be given the testimony of any witness you may take into consideration his or her interest in the case; his or her candor or frankness or lack of it, and also his or her qualifications to know and understand the matters about which he or she may testify.

If, under the evidence and these instructions, you find in favor of the plaintiff for personal injuries, and against the defendant, you are then to determine the amount of damages to be awarded. You should award him by way of special damages such amount as will reasonably compensate him for his expenses, including hospital and doctor expenses and loss of earnings, which he necessarily incurred because of his injuries, not exceeding the amounts set forth in the complaint.

In addition, you should award plaintiff such amounts as will reasonably and fairly compensate him for his permanent injuries, if any, and for the pain and suffering which he has endured and which he will with reasonable [225] certainty endure in the future. In arriving at the amount to be awarded him for his permanent injuries, if any, you are to consider the health and condition of the plaintiff before the injuries complained of, as compared with the plaintiff's present condition in consequence of said injuries; you should consider the nature and extent to such injuries, if any, the extent to which they will disable him in the future from performing his daily activities and the extent to which they will interfere with his normal enjoyment of life in the future. You are to allow such damages as in your opinion will be a fair and just compensation for the injuries and damages sustained, not exceeding the amount claimed in the complaint. The law does not provide any fixed standard by which pain, suffering and injuries, and compensation

therefore, are to be measured, but necessarily that depends upon your good sense, judgment and experience, based upon the evidence in this case.

You may also take into consideration that the life expectancy of one aged sixty-eight is 9.47 years.

If you do determine that the plaintiff is entitled to recover in this action, you should determine the amount by an open and frank discussion among your members, and you should not arrive at any amount to be allowed the plaintiff by each, stating the amount you [226] think should be allowed and then adding them together and dividing the total by twelve or by the number taking part in such method. This would be a quotient verdict and you should not, under your oath as jurors, arrive at any such verdict.

The fact that the Court has instructed you upon the rules governing the measure of damages is not to be taken by you as any indication on the part of the Court that it believes or does not believe that the plaintiff is entitled to recover damages. This instruction is given you solely to guide you in arriving at the amount of your verdict only in the event that you find from the evidence and instructions given you by the Court that the plaintiffs are entitled to recover. If from the evidence and instructions, you find that there should be no recovery you will then disregard entirely the instructions

that have been given you concerning the measure of damages.

Before there can be any recovery for injury, the plaintiff must prove negligence on the part of defendant as the proximate cause of such injury, and if you find from the evidence that the injury, if any, to plaintiff was the result of an unfortunate accident which ordinary prudence and care as hereinbefore defined to you could [227] not have prevented or guarded against, then plaintiff cannot recover, and your verdict should be for defendant.

You must weigh and consider this case without regard to sympathy, prejudice or passion for or against any party to this action; your decision must rest upon the evidence presented in this case. A very strong argument has been made for the plaintiff for sympathy. But if we allowed sympathy to influence us we would be violating our duty.

In this court it is necessary that your verdict be unanimous. When you go to your jury room you will elect one of your members as foreman and he or she will act for you in any further matters connected with this case. When you arrive at a verdict your foreman alone need sign the verdict, and it will be returned to open Court.

Verdicts have been prepared for your use, and I believe you will have no trouble in finding the verdict which correctly reflects your finding. If

you find in favor of the plaintiff you will insert in the blank on the correct verdict the amount you have determined to allow for damages. If you find in favor of the defendants and against the plaintiff, you will use the verdict which so [228] states.

I will excuse you for a moment while I take up a question of law with counsel.

The Court: You may register any exceptions to the instructions.

Mr. Towles: Your Honor, in doing this I wish to use some of the instructions that I have requested, that is in order to take the exceptions.

The Court: You can just point out your instruction by number and point out the question you are objecting or taking your exception to.

Mr. Towles: I think perhaps I could just turn these instructions over to the reporter for his copying them into the record without my reading the entire thing, that is without reading all the way through these requested instructions.

The Court: You may hand them to the Court Reporter and it may be understood that your exceptions to the instructions will be allowed—I think if there is just a portion of some instruction that I refused to give I will have to ask you to dictate that portion into the record.

EXCEPTIONS TO INSTRUCTIONS

Mr. Towles: Plaintiff excepts to the refusal of the Court to give the following instruction requested by the plaintiff:

“One. You are instructed that the defense [229] of assumption of risk is not available to the defendant in this case.”

Plaintiff excepts to the refusal of the Court to give instruction number two, which is as follows:

“Two. You are instructed that it was the duty of the plaintiff as the architect of the building to make his inspections promptly and it was the duty of the defendant in the construction of said school building to take all necessary precautions for the safety of persons lawfully on the premises; to erect and properly maintain at all times all necessary safeguards for the protection of persons rightfully on the premises; to allow plaintiff as the architect of said building to at all times have access to the work wherever it was in preparation or progress and to provide proper facilities for such access and for inspection and to at all times keep the premises free from accumulations of waste material or rubbish during the progress of the work.”

Plaintiff excepts to the refusal of the Court to give instruction number three, which is as follows:

“Three. You are instructed that Plaintiff was the architect of the school building. Plaintiff had the right at all times to have access to the work wherever it was in preparation or progress and

it was the duty of the defendant contractor to provide proper facilities for such access and inspection. At the time [230] of the accident in question plaintiff was engaged in the actual performance of his duty in inspecting the progress of the construction work on the school building. He was where he had a lawful right to be in the discharge of his duties to the school district. He was proceeding to reach the roof thereof by the only means furnished by defendant, to wit, a ladder, in order to inspect the roofing that was being laid by defendant on the roof planking. I instruct you that one who goes on premises for the benefit of the owner or occupant, or in a matter of mutual interest, or in usual course of business, or for performances of some duty is, by implication of law, an 'invitee' of the owner or occupant.

"Under such circumstances I instruct you that defendant was required to use reasonable care to protect plaintiff as an invitee of defendant by furnishing him with a reasonably safe place in which to perform his work of inspection, to provide proper facilities for access to the place upon or in said building to be inspected by him, and to furnish and maintain passageways, stairways, scaffolding, ladders and other appliances in connection therewith in a reasonably safe condition."

Plaintiff excepts to the refusal of the Court to give instruction number four, which is as [231] follows:

"Four. You are instructed that it was the duty of defendant construction company to comply with

all applicable provisions of federal, state and municipal safety laws and building codes to prevent accident or injury to persons on, about, or adjacent to the premises where the work was being performed.

“You are further instructed that the Industrial Accident Board of the State of Idaho was, under the statutes of the State of Idaho, empowered to adopt reasonable minimum safety standards and to make inspection in and about any place where workmen were employed; that pursuant to said statutory authority the said Industrial Accident Board adopted in 1947, Code 2, Idaho Minimum Safety Standards and Practices for the Building and Construction Industries, which said Code 2 acquired the force of law and became an integral part of the Workman’s Compensation Law of the State of Idaho, and that said Code was in force and effect at the time of the accident to plaintiff on September 12, 1952.”

Plaintiff excepts to the refusal of the Court to give Plaintiff’s Requested Instruction Five, as follows:

“You are further instructed that said Code in Part 1, entitled ‘General Requirements’ under the heading ‘Disposal of Waste Material’ in [232] Section 1.117 provides as follows:

“‘All scrap lumber, waste material, and rubbish resulting from the building construction shall be collected and removed, stored in neat piles, and not left to accumulate.’

and in Part IV, entitled 'Ladders' under the heading 'Portable Ladders' in Section 4.66 provides as follows:

“ ‘In the use of ladders from the ground, the lower end shall be placed on a solid footing to prevent it sinking into the earth.’

and in Section 4.67 provides as follows:

“ ‘If top of ladder is in danger of slipping or tipping, it shall be securely tied or fastened.’

“You are further instructed that under Part 1, Sec. 1.2, the Code makes the use of the word 'shall' in its provisions mandatory, and Part 1, Sec. 1.4, makes employers and employees jointly responsible for the observance of applicable codes and safety measures and for the posting of all necessary warnings and danger signs conspicuously located at all points of traffic and hazard for the protection of the public and workmen.”

Plaintiff excepts to the refusal of the Court to give Plaintiff's Requested Instruction Number Six, which is as follows: [233]

“If you find from the evidence that the ladder in question was installed by defendant at the time and place and in the position indicated by the evidence and that the defendant permitted waste material and rubbish resulting from the building construction to accumulate in and about the base of said ladder so that the lower end of said ladder was not placed on a solid footing, and if you further

find that the top of said ladder was in danger of slipping or tipping and that it was not securely or at all tied or fastened contrary to the provisions of the building and construction code aforesaid and that the violations thereof by defendant, or any thereof, contributed to the accident and were the proximate cause of the injuries complained of, then I instruct you that such violations were negligence per se, that is as a matter of law.”

Plaintiff excepts to the refusal of the Court to give Plaintiff's Requested Instruction Number Seven, as follows:

“You are instructed that if you find that the ladder in question was in danger of slipping or tipping, defendant was bound under the law to furnish to plaintiff a ladder at the time in question, the top of which was securely tied or fastened and safe to be used, and to keep and maintain the same in such condition at all times so as not to expose plaintiff to any hazard or risk.” [234]

The Plaintiff excepts to the refusal of the Court to give Requested Instruction Number Eight.

“You are instructed that in connection with the defense of contributory negligence, you are entitled to take into consideration the obligations imposed upon defendant by the code of minimum safety standards for the building and construction industry, all of which I have heretofore specifically pointed out to you, and whether or not the defendant had failed to perform any of said obligations which were the proximate cause of the accident in question. You may further take into consideration

the fact that the way provided by defendant, as a means of egress and ingress to the roof of the building from the ground and which the evidence shows was used by plaintiff and defendant's employees in order to reach the roof of said building from the ground, was the only way or means of access provided by defendant for plaintiff and its employees to reach the roof of said building, and further that the plaintiff at the time of the accident in question was acting in the performance of a duty imposed on him by the school district and the defendant itself and which was for their mutual benefit."

The Plaintiff excepts to the refusal of the Court to give Requested Instruction Number Nine.

"You are instructed that even though [235] you may believe from the evidence that the plaintiff knew of the condition of the ladder and the conditions surrounding it, and knew that said ladder and the manner in which it was being used created some danger, plaintiff's attempt to climb said ladder at the time and in the manner testified to is not necessarily contributory negligence, provided, that under all the facts and circumstances of this case, in making such attempt, he was exercising such due and reasonable care as persons of ordinary prudence would exercise under the same or similar circumstances, and if in fact the accident resulted from the negligence of the defendant."

Plaintiff excepts to the refusal of the Court to give the Jury Requested Instruction Number Ten.

"You are instructed that it is not negligence for

one to use an instrumentality known to be dangerous, if reasonably prudent men differ as to the propriety of encountering the danger. That an instrumentality in such condition and situation was used by others in the same manner and about the same time is relevant evidence to be considered by you in determining the question of due care on the part of the plaintiff." [236]

The Plaintiff excepts to the refusal of the Court to give Requested Instruction Number Eleven, as follows:

"You are instructed that one who voluntarily and unnecessarily assumes a position of danger, the hazards of which he understands and appreciates, cannot recover from a risk incident to the position, unless there is some reason of necessity or propriety justifying him in so doing. Exposure to known danger, however, only constitutes contributory negligence where it is a voluntary and unnecessary exposure to a dangerous instrumentality or condition, the perils of which are appreciated by plaintiff. If you find from the evidence that plaintiff took a risk in the performance of his duty, then I instruct you that that fact is entitled to great weight by you in determining whether plaintiff's conduct was negligent.

"The mere fact that a place is dangerous does not, in itself, deprive one injured of the right to recover where, by the exercise of care proportionate to the danger, one might reasonably expect to avoid the danger, or if reasonably prudent men might

differ as to the propriety of encountering it, or where the way used is the only way.”

The Court: Your exceptions are allowed. [237]

Mr. MacGillivray: We have no exceptions.

The Court: You may call the Jury.

The Court: The alternate juror, Mrs. Mayes, will now be excused. The bailiffs may be sworn. Ladies and Gentlemen, of the Jury, you may retire to consider your verdict. [238]

State of Idaho,
County of Ada—ss.

I, G. C. Vaughn, hereby certify that I am one of the official Court reporters for the United States District Court for the District of Idaho, and

I further certify that I took the testimony and proceedings given and had in the above-entitled matter in shorthand and thereafter transcribed the same into longhand (typing) and

I further certify that the foregoing transcript consisting of pages numbered to 238 is a true and correct transcript of said testimony and proceedings.

In Witness Whereof, I have hereunto set my hand this 31st day of January, 1955.

/s/ G. C. VAUGHAN,
Reporter.

[Endorsed]: Filed October 12, 1955. [239]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under Rule 75 (RCP) to wit:

1. Complaint.
2. Summons with Return attached.
3. Answer.
4. Minutes of the Court of Oct. 11, 1954, setting the case for trial.
5. Copy of Notice resetting the case for trial.
6. Judgment.
7. Bill of Costs.
8. Motion for New Trial.
9. Satisfaction of Judgment.
10. Order Denying Motion for New Trial.
11. Notice of Appeal.
12. Designation of Contents of Record on Appeal.
13. Appellant's Statement of Points.
14. Designation of Portions of Record to Be Printed.
15. Transcript of Testimony.
16. Exhibits Nos. 1 to 17, inclusive.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court this 25th day of October, 1955.

ED. M. BRYAN,
Clerk.

By /s/ LONA MANSER,
Deputy.

[Endorsed]: No. 14933. United States Court of Appeals for the Ninth Circuit. G. A. Pehrson, Appellant, vs. C. B. Lauch Construction Co., a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Northern Division.

Filed November 7, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.